

THE
MAITLAND DISTILLERY CASE

REPORT

OF THE
TRIAL OF MR. S. S. HALLADAY,

AT THE
YORK AND PEEL ASSIZES,

BEFORE THE HON. JUSTICE JOHN WILSON,

JANUARY 8-12, 1866.

BY WILLIAM COLDWELL,

REPORTER FOR THE "GLOBE."

TORONTO, C.W.:

PRINTED AT THE GLOBE STEAM JOB PRESS, 26 & 28 KING STREET EAST.

1866.

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THE MAITLAND DISTILLERY CASE.

THE ATTORNEY GENERAL *vs* S. S. HALLADAY.

Counsel for the Crown, THOMAS GALT, Esq., Q. C., J. T. ANDERSON, Esq., R. A. HARRISON, Esq., and JAMES PATTERSON, Esq. *For the Defendant*, HON. JOHN HILLYARD CAMERON, Q. C., M. C. CAMERON, Esq., Q. C., STEPHEN RICHARDS, Esq., Q. C., and E. CROMBIE, Esq.

The trial commenced on the 8th January, 1866, at the Winter Assizes for the United Counties of York and Peel, held in the Court House, Toronto.

It was charged, on behalf of the Attorney General, that the Defendant, S. S. Halladay, who had carried on the Distilling business at the Village of Maitland, between Prescott and Brockville, had not, while carrying on this business, complied with the regulations of the Statute 27th and 28th Vic., by which he was bound to keep such stock book or other books as were described by the regulations prescribed by the Minister of Finance, and enter therein in full a statement of all grain or other vegetable matter used in distilling or rectifying, and also all spirits made and disposed of, with the strength of the same; the quantity of grain malted and the quantity otherwise disposed of. It was charged on behalf of the Crown that Defendant had made and disposed of 200,000 gallons of spirits between September, 1864, and July, 1865, which had never been entered in the stock book or paid duty; in consequence of which Defendant became liable to the penalty imposed in such case, namely, a penalty of \$200, together with a further penalty equal to three times the amount of license fees, duty or other impost payable under the Act; and that in this way Defendant was liable to the Government in the sum of \$180,000.

The defence set up was that there had been no infringement of the Statute. It was objected, on the part of the Defendant:

1. That there was no proof of "regulations," in writing or otherwise by the Finance Minister, as to the form of the stock book.
2. There was no approval in writing, by the Finance Minister, of the form of the stock book; and his verbal approval was insufficient.
3. There was no "regulations" either verbal or in writing of the Governor-in-Council, or approved by the Governor-in-Council, either in relation to stock books or any other particulars; and proof of such regulations is necessary by law before the penalty, as stated in the information, could be incurred.
4. There is no description in the Act of the meaning of "stock," and whiskey distilled is not included in the term.

5. Whiskey or spirits removed from the Distillery to the warehouse or other house of Defendant, is not disposed of, and need not therefore be returned as disposed of, until sold or properly parted with; and spirits not brought into the Distillery are not returnable.

6. That the information in evidence produced could be laid only for not returning to Government a true account under the 62nd Sec. of the Act, there being no stock book or other proper regulations of the Minister of Finance or of the Governor-in-Council, on which the penalty as laid could be incurred.

Mr. THOMAS GALT, Q.C., opened the case for the Crown. He said—Gentlemen,—the case which is about to be laid before you is, I believe, the most important that has been tried in the Province for many years. It is important in every respect in which one can be, to the public. It is important with regard to the amount involved, for that was no less a sum than \$180,000. It was important to the revenue of the country; because the ground of complaint was, that frauds to an astounding amount had been perpetrated. And it was also a case of great importance to the Defendant in the suit, for it involved, in the most serious manner possible, his character and fortune. Under these circumstances, Gentlemen, I will have to beg your close attention to a rather dry subject, as a great deal of my address will consist merely of figures. While I am now addressing you, it would not be right for you to take down any memorandums on the subject. I have, first of all, to make good my statements; and when I do so, by the witnesses to be produced before you, then you can make notes of facts and figures. The facts of this case I will now state to you. Sherman Smith Halladay, the present Defendant, went into Company with another person named Borst. They carried on business under the title of Borst, Halladay & Co., and were Distillers at Maitland, a small out-of-the way village between Prescott and Brockville. They constructed there a large Distillery, in such a situation as to be well adapted for carrying on business either honestly or dishonestly. It was close by the River St. Lawrence, and within half a mile of the Grand Trunk Railway Station. But before going into further particulars of the case I will state to you, Gentlemen, what the Legislature has said with reference to Distilleries. This is set forth in the information filed by the Attorney General in this case, which gives the court to understand certain facts. I will read it to you as I wish to occupy as little of your time with my remarks as I can, consistently with your having a thorough knowledge of the case. This is the information of the Attorney General:

" PROVINCE OF CANADA,	} The fourth day of September, in the year of
" County of the City of Toronto	
" To Wit:	
	our Lord One Thousand Eight Hundred and
	Sixty-five.

"Be it remembered that the Honourable John Alexander Macdonald, Her Majesty's Attorney General for Upper Canada, who prosecutes for HER MAJESTY the Queen in this behalf, doth in behalf of HER said MAJESTY give the Court here to understand and be informed that every Distiller in the Province is required by law to take out a license, and that every party licensed as a Distiller is required by law to keep a book or books in a form to be furnished from time to time by the Minister of Finance, and to be open at all seasonable hours to the inspection of

the Collector of Inland Revenue, or other proper officer of Excise, wherein such Distiller shall enter from day to day the quantities of grain or other vegetable productions, or other substances put by him into a mash tub, or otherwise used by him for the purpose of producing beer or wash or consumed by him in any way for the purpose of producing spirits, or otherwise disposed of, and also the quantity of spirits by him distilled, manufactured or made; and that every Distiller who carries on any business subject to excise is by law required further to keep such stock book and other books, and in such form and manner as shall be ordered and prescribed by regulations approved by the Minister of Finance, and that every person carrying on any business subject to excise who should fail or neglect to keep stock books and all such other books as may be required to be kept by any regulations approved by the Governor-in-Council, and by the Act passed in the Session of Parliament held in the 27th and 28th years of the reign of our said lady the Queen, and in the year of Our Lord One Thousand Eight Hundred and Sixty-four, entitled, "An Act to amend and consolidate the Acts respecting duties of excise, and to impose certain new duties," or to make true and correct entries therein of all particulars required by the said Act or the said regulations to be entered in such stock books, should forfeit and pay for every such offence a penalty of \$200, together with a further penalty equal to three times the amount of the duty payable under said Act on any stock, article or commodity in respect of which any fraudulent, false, incorrect or imperfect entry, return, account, or statement has been made, or in respect of which any entry, return, account, or statement has been in whole or in part neglected or refused to be made. That before and at the time of the committing of the offence in this Count hereinafter mentioned, and before the exhibiting of this information, the form of such stock books and the manner of keeping the same were ordered and prescribed by regulations approved by the Minister of Finance. That before and at the time of the committing of the offence in this Count mentioned, and at the time of the exhibiting of this information, there was by the said Act imposed, to be levied and collected on all spirits distilled within this Province, on every wine gallon of spirits of the strength of proof by Sykes' Hydrometer, and so in proportion for any greater or less strength than the strength of proof and for any less quantity than a gallon, 30 cents. That Sherman Smith Halladay and others in partnership with him, under the several names and styles of Borst, Halladay & Co., and S. S. Halladay & Co., were from, to wit, the First day of September, One Thousand Eight Hundred and Sixty-four, up to and until the first day of July, One Thousand Eight Hundred and Sixty-five, Distillers at the Village of Maitland, in this Province, and were duly licensed as Distillers as by law required, and then and there, during all the time aforesaid he, the said Sherman Smith Halladay, either alone or in partnership with others, carried on business subject to excise. That forms of said stock books, [and directions as to the manner of keeping the same, as ordered and prescribed by regulations approved by the Minister of Finance, had before the said first day of September, One Thousand Eight Hundred and Sixty-four, been by proper authority supplied to him, the said Sherman Smith Halladay, and the said Sherman Smith Halladay, thereupon, on or before the said first day of September,

One Thousand Eight Hundred and Sixty-four, procured such stock books to be made for his said Distillery in accordance with said forms, and showing the particulars required by the said Act and by the said regulations. That the said Sherman Smith Halladay, being such D stiller as aforesaid, at the Village of Maitland aforesaid, after the passing of the said Act, and after the first day of September, One Thousand Eight Hundred and Sixty-four, and before the day of exhibiting this information, did not, during all the time aforesaid, to wit, from the first day of September, One Thousand Eight Hundred and Sixty-four, to the first day of July, One Thousand Eight Hundred and Sixty-five, and on each and every day between the said first day of September, One Thousand Eight Hundred and Sixty-four, and the said first day of July, One Thousand Eight Hundred and Sixty-five, make true and correct entries in such stock books of all particulars required by the said Act or the said regulations to be entered in such stock books. That among the particulars required as aforesaid to be entered on such stock books, was the total wine gallons of the strength of proof distilled and taken from the close receiver, and bought or brought into the Distillery during the periods of time in that behalf specified. That a certain large quantity, to wit, 200,000 wine gallons of spirits, of the strength of proof by Sykes' Hydrometer, was between the said first day of September, One Thousand Eight Hundred and Sixty-four, and the said first day of July, One Thousand Eight Hundred and Sixty five, by the said Sherman Smith Halladay, and others in collusion with him, distilled and taken from the close receiver and bought and brought into his Distillery, which was not entered on the said stock book, owing to the failure and neglect of the said Sherman Smith Halladay, and others in collusion with him, to make true and correct entries therein of all particulars required by the said Act and by the said regulations to be entered in such stock books at the time and place aforesaid, whereby, and by force of the provisions of said Act, the said Sherman Smith Halladay hath for his said offence forfeited to Her said MAJESTY the QUEEN the penalty of \$200, together with a further penalty equal to three times the amount of duty payable under the said Act on the said large quantity of spirits, to wit, the said 200,000 gallons distilled and taken from the close receiver and bought and brought into the said Distillery, and not entered in the said stock books, owing to the failure and neglect of the said Sherman Smith Halladay, and others in collusion with him to make true and correct entries thereof in the said stock books, which said further penalty amounts to a large sum, to wit, the sum of \$180,000." There is also a second Count in the indictment which simply sets forth in it the form of the stock books, and says that among the particulars required to be entered therein is the total wine gallons of the strength of proof disposed of by Halladay; and then it charges that there were 200,000 gallons disposed of by Borst, Halladay & Co., between the 1st September, 1864, and the 1st July, 1865, which quantity was not entered in the said stock books as required by law; and on this account the consideration of the Court is prayed in the premises. This, gentlemen, is the nature of the charge I prefer before you to-day. Now, many persons consider smuggling a very trifling thing; but those who talk in that way little think of the long train of crime this offence draws after it. You will be astonished to learn that almost every offence known

to our law has been committed to give effect to this one. Remember, I do not say that all these offences were committed by Halladay. But I do say this, that in carrying out the frauds on which my case is based,—and to substantiate which I appear before you on behalf of the Attorney General,—fraud and perjury without end almost have been committed. By the statute in this case the Distiller was required every two weeks to make an affidavit as to the total quantity of spirits made by him within the time, and I will put in 20 such affidavits, every one of which is a fraud. I will prove to you that the shipping notes were stolen from the Grand Trunk office—that the agent of the Grand Trunk Railway at Maitland kept false books and has left the country—and, last of all, I am prepared to prove that Halladay committed an assault with intent to murder, in his efforts to suppress evidence in this case. If, gentlemen, you become satisfied of these things, you and any person hearing me will be led to think that smuggling is a very different and much graver offence than it is usually represented to be. Not only does the smuggler cheat the Government, but he takes advantage of the honest trader; and in this instance, when I charge before you that this Defendant has smuggled 200,000 gallons, I put the quantity far lower than I might. I tell you he has smuggled not merely 200,000 gallons, but nearly 300,000 gallons. But I prefer to put it at the former quantity to show you that we are not pressing in every gallon to make up the case. Now, I will tell you the history of this matter from beginning to end. I will show you that had it not been for the admirable manner in which the Grand Trunk Railway Company kept their accounts, this man (Defendant) would have walked out of Court to-day and laughed to scorn the laws he has broken. I will also prove to you, from their own stock books of grain, that it is utterly impossible but that he must have committed these frauds. I will show you that Borst, Halladay & Co. shipped over the Grand Trunk Railway alone a much larger quantity of spirits than their whole returns made. I will prove that he sent to Montreal alone an amount of over 490,000 gallons; and you will thus see that, when in the information the quantity smuggled is set down at 200,000 gallons, it has been put far below the full amount. When we talk of figures of this kind, it is very difficult for the mind to grasp their full importance. But if you are satisfied this Defendant did smuggle some 300,000 gallons, you must remember that that quantity is nearly equal to a quart of spirits for every man, woman and child in Upper Canada, from the extreme shores of Lake Huron to the Ottawa. It is, of course, a serious matter to charge any man in this way. It is something which ought not to be lightly done. But I undertake to prove to you what I have stated, and nine-tenths of that proof will be from the statements of the firm of Borst, Halladay & Co. themselves. I hold in my hand a copy of one of their stock books, which I may mention were of two kinds—one, showing the quantity of spirits made in the Distillery and taken from it; the other showing the grain brought into and used in the Distillery; for they were obliged by law to account for every pound of vegetable matter brought into the Distillery. From this book I find that they had on hand on the 1st September, 1864, 40,728 gallons, and in bond 42,352 gallons, making a total of 83,080 gallons. By the return they made, the spirits taken from the close receiver up

to the 31st October, was 2,115 gallons of the strength of proof; for the half month ending November 15, 4,316 gallons; for the last half of November, 17,971 gallons; for the first half of December, 19,289; for last half of December, 24,003; making a total of 67,694 gallons. These are the sworn returns entered in their stock books. The amount of every one of these returns is verified by Halladay's oath as the whole amount of their manufacture, and the whole amount on which they admitted their liability to pay duty. Now, for the first half of January they return 10,420 gallons; for the second half, 17,022; for the first half of February, 17,920; for the latter half, 20,166; for the first half of March, 16,430; for the second half, 18,584; up to April 15' 15,533 gallons; up to 30th, 10,698 gallons; from the first to the 15th May, 11,258 gallons; from the 15th to the 30th, 13,274 gallons; from the 1st to the 15th June, 11,511 gallons. and from the 15th to the 31st June, 10,984 gallons; making a total of 173,800 gallons for that half year. Now, I will show you the way the case stands. I have stated to you all the amounts which these parties represented to Government as the total of their manufacture, and, of course, all on which they admitted their liability to pay duty. Well, the stock books require not only this, but also that they should account for the manner in which the spirits was disposed of; that is to say, they had to enter in the stock book the date when the spirits were taken from the Distillery, name of the person to whom they were consigned, manner of removal, and the quantity of the strength of proof. The first side of the account requires that they should enter what they did—how much they made. The second side should show the manner of its disposal. That being the case, when we come to examine the stock book, what do we find? Up to the 31st December, 1864, the amount of spirits reduced to the strength of proof sold and disposed of was 74,339 gallons. Of this amount there was disposed of by conveyance, other than the Grand Trunk Railway, 16,988 gallons, and by the Grand Trunk Railway itself, 57,351 gallons. This is the amount which, according to their stock book, they took from the Distillery and disposed of between the 1st September, 1864 and the 31st December, 1864. From the stock book it also appears that, between the 1st January and the 1st July 1865 the amount of spirits of proof sold and disposed of was 281,519 gallons. In the addition of the stock book there appears, I may say, an error of two gallons, which I have set right. Well, from the amount I have mentioned has to be deducted 61,878 gallons—(as shown by the stock book)—for this number of gallons appears on both sides of the account. The Distiller, I may explain, is allowed to bond spirits, and so long as the quantity continues in bond, it is of course exempt from duty. But they are obliged to give an account of all the spirits made in the Distillery, and therefore when they send an amount into bond, they take credit for it; but when it is taken out of bond it is entered on the debit side of the account as so much spirits brought into the Distillery. In the present instance, during the six months, they took credit on the 6th April, with placing 18,584 gallons spirits in the bonded warehouse, where it remained till June, when it was taken out, and they charged themselves with the amount. Well, from the total quantity of spirits entered on the credit side of the stock

book, this 61,878 gallons must be deducted, when we have 219,643 gallons as the amount which, according to the stock book, was actually disposed of between January 1, 1865 and July 1, 1865. Of this amount there was disposed of by conveyance, other than the Grand Trunk, 28,291 gallons, and by the Grand Trunk, 191,352 gallons, which, together make the 219,643 gallons. From these statements, it appears that the total quantity forwarded by the Grand Trunk was, according to the stock book, up to 31st December, 1864, 57,351 gallons; and between that date and the 3rd June, 1865, 191,352 gallons, giving a total of 248,703 gallons, represented in their stock book as the whole amount sent per the Grand Trunk Railway. Then, again, of that amount, according to their stock book, only 185,991 gallons were sent to Montreal, and 62,712 gallons were sent to Quebec and other places. Now, mark me. If they are shown to have disposed of more spirits than this, they are liable to this information. There was a balance on hand on July 1 of 30,592 gallons, making the total quantity of which they had the means of disposing, 293,982 gallons. Now, I will prove to you the delivery in Montreal, over the Grand Trunk, of upwards of 490,000 gallons; and I will trace that quantity for you from the time it left the Distillery till it got to the cellars of those buying it. Farther, I will show you that it does not include the large quantities sent to Quebec and other places. This alone would fully make up the 200,000 gallons charged in the indictment, and I will prove this quantity to you beyond doubt as against what they admit to have sent. You may say, well there may have been something very wrong; but how do you bring the charge home to this Defendant? I will show you, gentlemen, in the most conclusive way, by the Collector of Customs, and others, that he took into the Distillery material sufficient to enable him to do this. Out of the stock books of the firm, I will prove to you that they consumed this amount in the Distillery. Thus, from their own admission, it will be apparent to you that they used material enough in the Distillery to have made these enormous quantities of spirits; and if I succeed in doing this to your satisfaction, you will, I think, have very strong and forcible testimony to induce you to believe the guilt of the Defendant. With regard to the quantity of material consumed, I find they had on hand, December 1, 1864, 644,000 lbs. of corn. I may here mention to you that I am told that in the best conducted Distilleries they can make a gallon of spirits of the strength of proof from a trifle over 16 lbs. of grain or other vegetable matter. But in the Act of last session, a liberal allowance has been made, and 17 lbs. is the quantity allowed. This law, it is true, was not in force at the time these frauds were perpetrated; but I am willing to allow the Defendant the benefit of it, and charge them at the rate of one gallon for every 17 lbs., although from all I can learn, that quantity is more than sufficient. Still, as I have said, I will be liberal, and give them the fullest allowance. They had on hand, then, December 31, 644,000 lbs. of corn. Including this, they admit having brought into the Distillery 4,685,953 lbs. from September 1, 1864, to December 31, 1864. Leaving out of account the quantity on hand, they appear to have taken into the Distillery within the periods mentioned, 4,041,953 lbs. Up to July 1st, they admit 5,707,533 lbs. This latter, however, includes the balance from the previous half

year. Therefore, the quantity brought in from January 1 to July 1 was 1,957,363 lbs., making a total of 6,643,316 lbs., which is admitted by themselves. On the other hand, they balance the quantity by claiming credit for a variety of things, which we say they are not entitled to credit for at all. They take credit for 12,432 lbs., which they say were not used by them in the Distillery, but delivered to the teams of Borst, Halladay & Co., and used by them. They take credit for additional quantities of corn used in the stables of S. S. Halladay, and Borst Halladay & Co., 8,400 lbs. at one time, at another time 44,800 lbs., and at another time 84,000 lbs. They also take credit for corn sold to Morse, 3,300 lbs.; for corn damaged of the cargo of the schooner *Eli Bates*, 44,800 lbs. Concerning the latter item, all we have to say is that there may have been a few pounds of the cargo damaged and lost, but we have never had any proof of it. They claim further, as sold to McNaughten, 13,440 lbs. and to one Armstrong 61,600 lbs. As damaged on one occasion in the schooner *St. Lawrence*, 672,000 lbs. corn. Here, again, I would say, we have no proof. If that corn was damaged, no doubt it was taken to the Distillery, and made use of. In this one entry, we have nearly 12,000 bushels disposed of. And you will remember they claim some 149,000 lbs. used for feeding in the stables of S. S. Halladay & Co., and Borst, Halladay & Co., or some 2,500 bushels. At the time the Distillery was seized by Government, they admit having on hand, 1,911,289 lbs. of corn. But all we could find as having been on hand at that time was 174,013 lbs. There were in all 6,643,316 lbs. admitted by them to have been received into the Distillery, and against that they take credit in the items I have explained to you for 944,833 lbs. Taking their own account, we find the amount consumed in the Distillery to be 5,524,470 lbs. And there is yet an addition to be made to this amount. An item has to be added of forty-one car loads of corn, which were received into the Distillery, and not accounted for, which circumstance ultimately led to the detection of the whole matter. I will show you, gentlemen, by Mr. Halladay's own admission that one lot of 41 car loads of corn was brought from Sarnia to Maitland, not one pound of which was ever entered on the stock book! I will also make it apparent to you that 37 car loads of corn were at one time sent to Maitland and received there, which were only entered as 6. Thus 72 car loads of grain went into that Distillery, not one pound of which was ever entered in the returns, as should have been done. A car load, I may inform you, weighs about 22,000 lbs., and you will thus see that these two items make a total of 1,584,000 pounds of corn. If you add this to the amount admitted by themselves, it makes 7,108,470 lbs. of corn alone, which they admit having consumed between Sept. 1, 1864, and July 1, 1865. If you divide this number of pounds by 17 lbs., to bring it to gallons, you will find it gives 418,145 gallons. And bear in mind, before they can take credit for the quantities they have credited themselves and charged others with, it will be necessary for them to prove their statements. In the absence of any proof, of the 944,833 lbs., I contend I have a right to strike off the amount sold to McNaughten, 13,440 lbs.; the 61,600 lbs. said to have been sold to Armstrong; the 44,800 lbs. said to have been damaged by the *Eli Bates*; the 672,000, which they claim as lost in the *St.*

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Lawrence; and, lastly, the 149,000 lbs. which the claim as fed to horses. If you become satisfied that these are fictitious entries, and strike them off, the total of corn alone would produce 473,430 gallons of proof spirits. But they state that the quantity of barley and other grain consumed between Sept. 2, 1864, and July 1, 1865, was 878 lbs. barley; 125,523 lbs. oats; 410,959 lbs. rye; and 33,770 lbs. malt; also 82,407 lbs. oats; 357,535 lbs. rye; 74,578 lbs. malt,—making a total, admitted by themselves as brought into the Distillery (other than corn), of 1,085,650 lbs. In July they claim to have had on hand, 471,460 lbs; and they thus leave a balance to be accounted for by them of 614,190 lbs., which, at 17 lbs. to the gallon, represents 36,120 gallons. From corn alone, I showed you that they consumed enough to have manufactured 473,430 gallons, and if to this we add the 36,120 gallons, we get 509,550. According to their own statement, therefore, they consumed material more than enough to make the quantity charged against them in the information. To the 509,550 gallons you must add their admitted balance of 83,000 gallons on Sept. 1st; and then we get a grand total of 592,550 gallons, from which we have to deduct the 30,592 gallons on hand July 1. If, gentlemen, you become satisfied of the correctness of these statements, this defendant ought to account for 561,958 gallons, which they must have made and disposed of. Now these, gentlemen, are figures made from their own admitted statements, with the exception of the car loads of corn, which I can prove to you were brought into the Distillery. It appears that some time since—I forget when, exactly—but it was in May or June, I think—the Government received information that something was wrong with regard to a shipment of corn to Maitland. It will be proved to you that in company with another person, Halladay made application for a certificate of export for 41 car loads of corn. The corn, they represented, had gone to Ogdensburgh already; but for the satisfaction of the gentleman at the Custom house, they tendered as proof the entry made in the Grand Trunk books that these 41 car loads of corn had been sent to Ogdensburgh. The Custom-house officer refused to give a certificate unless the manifests were produced. Halladay said he had no manifests to show; then, said the officer, I cannot give you the certificate. The Customs House officer immediately informed Mr. Brunel, Inspector of Customs and Excise, of the circumstances. The latter gentleman instituted an enquiry, and the result was that Halladay admitted at length that the 41 car loads had gone into the Distillery; while, with regard to the remaining 31 car loads, we will prove that 37 car loads left Kingston consigned to Borst, Halladay & Co., were received by them at Maitland, and only 6 were entered on their books. These are the only two instances in which we have been able to trace the operations of the firm clearly in these frauds respecting the receipts of grain; for, gentlemen, we can get little or no account of what they were at. They were, it appears, the best customers of the country people for miles around; but no account is found of these great purchases of grain which were found so beneficial to the farmers. Well, Mr. Brunel instituted an investigation into the affairs of the Distillery. He made application to see the entry on which they claimed the certificate of export should be given; and, at the Grand Trunk office, sure enough, there he found the entry. Still, Mr. Brunel was satisfied something was wrong,

and so he telegraphed to the Grand Trunk Railway authorities, requesting them to send an auditor to examine the books, and see whether they were correct or not. A gentleman came up, and subsequently reported them all right. Still Mr. Brunel was not convinced—the books were sent for—re-examined—and then Mr. Brunel discovered that there were two sets of books. The books which the station master handed to the auditor for examination were not the books shown to Mr. Brunel. And, gentlemen, I will prove to you that the station master at Maitland kept books, which were not the true books of the Grand Trunk Railway; and on a comparison of the Grand Trunk books with these false books, these frauds came to light. Fictitious entries were made in these books, in Halladay's interest; and if you become satisfied of this fact, then I think you will hold that my assertion as to the corruption and bribery of the Station-master will be made good. You will also agree with me that Halliday has committed the perjury which I charge against him; and if you believe the further statement I have made to you as to the quantity of spirits they had it in their power to make in the establishment, it will convince you that I make no false charge against Halladay when I say that he has been guilty of a felony in removing spirits from the close receiver. In preparing this case for you, gentlemen, we found ourselves in this frightful position. Frauds to an enormous extent had, we were convinced, been committed on the Government—the Station master at Maitland, who could have given us light in these transactions, had left the country; and worse still, we found out that he kept false books, and then we discovered that the shipping notes, per the Grand Trunk, had disappeared too. Now, I will make it plain to you that it was Halladay's interest to have those notes stolen. There are two sets of notes taken—one the shipping notes, and the other the notes by the agent acknowledging the receipt of so much spirits. Every shipping note for 1864, and the greater part of those for 1865, have been stolen and were not to be found, high or low. But they made a mistake in screening their frauds in this way. They imagined, I suppose, that they were now perfectly free, and certainly their crime was in this way rendered far more difficult of detection. It was a heart-breaking piece of business, gentlemen, to get up the evidence in this case. To unravel the doings of the Station master at Maitland, a frightful amount of documentary evidence had to be gone through. The books were correct enough up to the time when Mr. Dumbrell, the former Station Master, resigned; but the greater part of the mischief was done afterwards. What then was to be done? I could prove the sale of an enormous quantity of spirits. If we could prove the amount taken on board the Grand Trunk cars at Maitland, the evidence would be complete. I could prove the sale in Montreal of hundreds of thousands of gallons by these persons; but could not prove directly that it all came from Maitland. I had the way bills it is true, but could not prove much in that way. How to get this proof was the difficulty. If all the conductors on the Grand Trunk had to be called, the enquiry would be interminable, and almost hopeless. But there is a Providence which guides the affairs of men; and it so happened that we found it would be necessary in this case to call only four of the conductors before you—which four brought down all the spirits from Maitland to Montreal. They will

prove the receiving and sending of the spirits to Montreal. I will then call a person to prove to you what the cars contained; and I will call another to prove the delivery of the spirits to the consignee themselves. To obviate as much as possible all unnecessary delay, I have had prepared for you, gentlemen, this schedule and statement of every way bill at Maitland, issued between the 9th September, 1864, and the 14th July, 1865. It contains, as you will see, the number of the car, date when forwarded, number of the way bill, name of consignee, description of goods, date when received in Montreal, person who gave them out, to whom delivered, name of conductor, and receipts. Now, what I propose is this, I will have before you the conductors who have carefully examined the way bills and who when they brought down the cars put their names on the back of the bill. Then again, their own memorandum book will be produced by which they can tell you that they moved such and such cars at such a time. The clerk who checked out the contents of the car will tell you what each contained, and we will prove the delivery of the goods. These facts I intend to prove for you; and I purpose asking the conductors whether they have carefully examined the way bills corresponding to my list, and whether they brought down these opposite to which their initials are placed. Of course it will be necessary to be more particular as to the deliveries. But as I have said, gentlemen, I am prepared to satisfy you of the sale in Montreal alone, of such a quantity of liquor as will make it clear to you that the Government has been defrauded in a much larger quantity than 200,000 gallons. At this stage, gentlemen, I do not think it necessary to occupy more of your time; and I shall now close my observations with a word or two. In a criminal trial, as a general rule, juries are told, if they entertain any doubt, to give prisoner the benefit of it; but this is not a case of that description. Like all others, when a charge is made against a man of such a grave character, it will have to be proved beyond all reasonable doubt. If that is done, it will be your duty to find against defendant; and so far from feeling regret at such a course, you should feel satisfaction that in the honest discharge of your duty, you had been enabled to defeat fraudulent practices of such enormous magnitude. One thing you must bear in mind during this trial, and that is, that when witnesses are called to speak to the quantity of spirits, it is almost invariably 50 per cent. over proof, and therefore an allowance must be made in the quantity in that respect. One thousand gallons of such spirits would be equal to 1500 gallons on which duty is charged. The Legislature says that proof spirits is to be the test: if the spirit is less, then it is to be reduced in quantity; if greater it must be increased; and I think you will find in the examination I am now about to institute, that almost all the witnesses will speak of the spirits as over proof.

Mr. ALFRED BRUNEL was the first witness called. Examined by Mr. GALT:—

Are you the Inspector of Customs and Excise? I am. The document handed me is the form of stock book to be kept by Distillers, prepared under the Act 27 and 28 Vic., cap. 3, and approved by the Minister of Finance.

Hon. J. H. CAMERON—Where is the approval of the Minister of Finance to the form of stock book of which you speak? He approved it in my presence.

HON. J. H. CAMERON.—I would submit that the approval in writing of the Minister of Finance is necessary.

MR. GALT.—The statute says nothing about writing.

HON. J. H. CAMERON.—The statute distinctly speaks of "regulations." In the 35th sec. it is set forth that "every Distiller, brewer and tobacco manufacturer who is required to take out a license under this Act, or who carries on any business subject to excise, shall further keep such stock book and other books and in such form and manner as may be ordered and prescribed by regulations, approved by the Minister of Finance."

HIS LORDSHIP.—Do you object as to the form?

HON. J. H. CAMERON.—I object that the statute has not been complied with. We should have proof by the original document of the regulations as prescribed by the Minister of Finance, under which these books have been issued; and I contend that they cannot be produced here without such original document, or a certified copy. The "regulations" I affirm, must be in writing, and we must either have the original documents or certified copies of such "regulations" and approval; and then we must have evidence that these stock books were according to these regulations.

MR. GALT.—My learned friend is mistaken. In the first place the statute is silent with regard to the manner in which the Minister of Finance is to give his approval; and in the next place the books produced contain all the particulars required under the statute. They were prepared by the Inspector of Customs and Excise, by whom they were submitted to the Finance Minister. He, in turn, approved of the form, and it was adopted as containing all the requirements of the statute.

HON. J. H. CAMERON.—In reply, we say that if the statute prescribes no form, the form to be adopted certainly cannot depend on the verbal instructions approved of by the Minister of Finance. The statute, we contend, never contemplated any such thing. Written regulations were evidently contemplated by the statute. We say that the two steps which ought to have been taken in advance never were taken, and therefore object to the introduction of that document.

HIS LORDSHIP.—What is the statute?

HON. J. H. CAMERON.—The 27th and 28th Vic., chap. 3, sec 35, pp. 41.

HIS LORDSHIP.—(To Witness.)—Were these books given to the different Distillers, and did they use them?

WITNESS.—They were. The forms were prepared in MSS. by me, submitted to the Minister of Finance, who made one or two alterations, and finally approved them.

The JUDGE made an entry of what witness stated.

HON. MR. CAMERON.—The regulations and approval must be in writing. Mr. Brunel has stated there were no such documents.

MR. GALT.—But he has stated that the form produced has been used throughout the country; that all the books have been kept in this way.

HIS LORDSHIP.—I overrule your objections in the meantime, Mr. Cameron. It strikes me at present that if your client accepted these books as the proper form, it does not lie in his mouth now to say they are not. But I will note the point.

WITNESS.—This other document handed me is the form of stock book for grain.

Hon. J. H. CAMERON.—To all these documents, we make the same objections. His LORDSHIP.—Of course.

WITNESS.—Both documents were made and distributed under the same circumstances. I examined the stock books kept by Borst, Halladay & Co. at their Distillery frequently. These books were printed according to the form I hold in my hand. I often visited the Maitland Distillery. Was there a number of times during the ten months in which these transactions took place, commencing September 1, 1864, and ending July, 1865.

Mr. GALT.—Do you recollect your attention being called officially to any entry of corn made at Maitland during 1865? Yes.

Would you have the kindness to state the whole transaction? The first difficulty arose in September, 1864.

Say nothing about that. Begin and tell the whole story. I received information that a quantity of grain, consisting of 41 car loads, had arrived at Maitland from Sarnia for Borst, Halladay & Co., it turned out subsequently that it was consigned to some one else. In connection with this, there had been some irregularities in the entries in the Custom House. I proceeded immediately to Maitland to investigate the matter, and found that the corn had arrived there, consigned to the First National Bank, Detroit. I went to the Station Master at Maitland to make enquiries in reference to it. He said—

Hon. Mr. CAMERON.—Never mind what he said.

WITNESS.—Very well. I charged Halladay with having received the corn into his Distillery, and he admitted that he had done so.

Mr. GALT.—How many car loads were there? 41. The document in my hand is a copy of Distillery stock book No. 1. Copies were made under my supervision.

Mr. GALT.—I wish to show that there is no entry of grain in the stock book at all.

(Copies of the grain and spirit stock books were here handed in, and marked respectively "C" and "D.")

The JUDGE.—I have noted that these copies are used by consent.

Hon. Mr. CAMERON.—Everything is subject to the first objection.

WITNESS.—The 41 car loads are not entered in the stock book. Mr. Halladay admitted to me that he received the corn. The quantity and the number of car loads was named and admitted by him. It was 847,383 lbs. This was admitted to have been taken to the Distillery. At the same time I made a general investigation into the affairs of the Distillery (in July, last year), and this satisfied me that there was some fraud. From my papers I find that this enquiry commenced July 3, 1865, and continued several days.

HIS LORDSHIP.—After disposing of the corn, what did you do? A. I enquired in reference to other deliveries of grain, and found there had been some delivered—

Hon. Mr. CAMERON.—My learned friend, Mr. Galt, opened on the 41 car loads of corn, and in this proceeding you cannot take up any other matter.

Mr. GALT.—I have not opened on it at all.

HIS LORDSHIP.—Wait till I understand the objection.

HON. Mr. CAMERON.—I say whatever has not been charged in the information they cannot give evidence on.

HIS LORDSHIP.—As I understand the charge, it is that you made a number of false entries in the stock books?

Mr. STEPHEN RICHARDS.—That is not the charge.

The JUDGE.—And for each of these false entries, he says a certain penalty is due to the Queen. This is evidence.

HON. Mr. CAMERON.—I say it is giving evidence of something not charged in the indictment. No false entries of grain are charged in the information, and hence I say he cannot bring the matter up. Your Lordship will have to rule on the point.

Mr. GALT.—My learned friend's objection has no force. There are two charges. First, that the Defendant distilled and brought into the Distillery certain quantities of spirits; and, secondly, that he removed certain quantities of spirits. My object in proving the material brought in is to show the quantity consumed in the Distillery; and it will be for the jury to draw the inference that it was made into spirits.

HIS LORDSHIP.—This is not evidence on which you ask for a penalty. But you give it in order to show that he had material to make the quantity charged?

Mr. GALT.—Yes.

HIS LORDSHIP.—I understood you to open the case with the statement, which you said you would prove, that this Defendant sold more spirits than he entered in his books; and by showing what the quantity of grain received would produce, you would corroborate your statement?

Mr. GALT.—Yes. The first count is for distilling the whiskey; the second for selling it. I wish to prove that Halladay consumed an amount of material in the Distillery sufficient to have made more than double the quantity he returned.

HIS LORDSHIP.—So I understand. You offer to show he had material enough to have made all you charge him with.

HON. Mr. CAMERON.—I do not object to the question being put in another shape. It is not a question of false entry.

HIS LORDSHIP.—I will note the objection. Mr. Galt opened by stating—"I will show from his books and from the Grand Trunk accounts that Halladay made more spirits than he returned; and, moreover, he says, I will prove that a certain quantity of grain was required to produce it. Now I will give him the largest figure required to produce a gallon of spirits, namely, 17 lbs. of grain, and yet I will prove his receipt of grain enough to make all the spirits I charge him with."

HON. Mr. CAMERON. I understand that; and only with that view is the evidence admissible.

Mr. M. C. CAMERON.—Our claim is that no circumstance foreign to the investigation should be imported into it.

Mr. GALT.—I have no objection to make the inquiry in the way suggested. (To Witness). In the course of these investigations, did you visit the Grand Trunk Station at Maitland? I did.

Did you examine the Grand Trunk Railway Company's books shown you as the books belonging to the Grand Trunk Station at Maitland? I did.

When you went to the Maitland Station, did you see the Station Master? I did; several times.

Did you ask him to show you the books of the station? Yes.

Did he show you books purporting to be the Grand Trunk books? He did.

Are these the books? They are not.

Hon. Mr. CAMERON.—That is no evidence against us.

Mr. GALT.—It is a circumstance from which the jury can judge whether or not there were false books kept.

HIS LORDSHIP.—I fail to see how it can be evidence against Halladay. You undertake to prove positively the quantities of liquor, by the way it was carried and other means. But in what way is the fact material, if the Station Master did run away,—if the books produced were not the books kept there, and that the other books were stolen?

Mr. GALT.—These are all circumstances to go to the jury; for I contend it is perfectly manifest that they were all done in Halladay's interest, and that of no one else.

Hon. Mr. CAMERON.—There might have been some one else interested in getting rid of the books.

Mr. GALT.—No; no.

HIS LORDSHIP.—You said you could prove the point irrespective of this testimony?

Mr. GALT.—I can; and for the present I will not trouble the Court with it. (To Witness.) You say you made an investigation on the 3rd July and discovered that these forty-one car-loads had gone into the Distillery; what did you do after this discovery? There were, I found, other car loads of corn which came to the Distillery and were not entered.

Well, what did you do? I seized the stock of spirits and grain.

What quantity of corn did you find on hand? I make it up 174,113 lbs. This account was taken July 8, and is arrived at after deducting the cargo of the stock, 922,899 lbs. The quantity actually on hand was 1,097,012 lbs, corn on July 1.

What quantity of oats did you find? The quantity supposed to be on hand was 246,466 lbs. But I cannot swear positively as to it; rye, 417,200 lbs.; malt, 30,780 lbs. These quantities were subsequently verified by a person who is in Court. They were made with the consent and assistance of Halladay, Arnold, Wilson and Davis. It was made up at the period of seizure, when the parties went and measured the grain. I afterwards found the measurement to be incorrect, when a second measurement was made by Striker, Davis and others.

Cross-examined by Mr. M. C. CAMERON.—At the time the statement was made to you by Halladay as to the forty-one car-loads, did he say what became of the corn? No; he said, generally—you know I have a good deal of corn coming and going, and do not keep account of it.

Was any person present? No.

Did you usually communicate with Halladay, or any person in his behalf? Very frequently. On that subject I do not remember seeing any one except Halladay.

Who did you usually see there? Generally Halladay; sometimes Arnold; sometimes Chisholm.

When was it that these car loads of corn were received? Sometime in May.

That is in May, 1865? Under date 31st May.

Tell us what question you put to Halladay in reference to this matter? I told him the Station Master admitted to me that the corn did not go to Ogdensburg, as represented. Halladay then made a statement to me about the corn. It was, that the corn did come into the Distillery, and that a great deal of corn came and went which he kept no account of.

That was the statement Halladay made to you when you made the enquiry in the first place, was it? No; I spoke to him about it half a dozen times, and he said at first that it was not his; that it belonged to some one else.

Mr. M. C. CAMERON.—Oh, this is another statement about it.

WITNESS.—The difficulty was to get him to make two statements alike.

Mr. M. C. CAMERON.—It was at your instance this trial came on; do you expect Her MAJESTY to deal liberally with you? I expect nothing but what the law gives me; nothing more or less. The prosecution was not at my instance.

Do you mean to say that you do not expect to get anything out of this \$180,000? If you were the prosecutor, you would be entitled to half. I do not expect to get anything out of it, or the property seized.

Do you expect to get anything from the liberality of the Government? No; the lawyers will eat up the whole of it—(laughter)—unless you can show that the law allows me something.

If the prosecution is successful, will you make any claim? You are going a little too far. I have not the slightest intention of making any claim in the matter.

You have at different times made full investigations in reference to this Distillery—you found something wrong there, you say, and reported the matter to the Government in December, 1864, and then, I understand, commenced proceedings. When did they commence? I do not know.

Witness, by request, here read the report he made of the matter, which set forth that Borst, Halladay & Co. had failed to account satisfactorily for the grain which had entered their Distillery—the sales made of their stock showing some 25,000 gallons over the returns. He also read the report of the *Commissioner of Customs and Excise* on the case, recommending that proceedings should be taken to make them pay the difference.

Examination continued.—I investigated some things which had taken place previous to September 1. In 1864 the law was changed. The stock books did not come into operation till September 1, 1864, therefore I did not make use of any of this information. These enquiries extended from the commencement of the Distillery till September, 1864; and by their own admission of the quantity of grain brought in, 40,000 bushels were unaccounted for.

After that, it appears, they were allowed to take out a license again? Yes. At the time, nothing seemed wrong as to the apparatus so that we had no power to refuse a license. Mr. Wilson was the Collector of Inland Revenue there. When I went to the Distillery at different times, I examined the apparatus and did not find anything wrong.

Mr. GALT.—What examination have you referred to? Made in September, 1864.

Did you make subsequent examinations? Yes.

When? In August, July and June.

And did you find everything right? Apparently so, in reference to the Distillery apparatus. Previous to September 1, 1864, investigations showed that 40,000 bushels of grain had been unaccounted for. Mr. Cameron asked me did I at that time examine the apparatus.

Hon. Mr. CAMERON.—At that, or at any time? I examined the apparatus in July or August.

Mr. GALT.—Do you mean to say that in September, 1864, you made an examination of the utensils and apparatus of the Distillery? I did not measure them.

Then you did not examine them? The question is, did you examine the utensils of the Distillery in 1864? I examined, but did not measure them till August, 1865.

Hon. Mr. CAMERON.—My learned friend (Mr. M. C. Cameron) simply asked the question in reference to the apparatus. We did not ask anything in reference to the mash-tub.

Mr. GALT.—Then let it be understood that his examination was confined to this.

Mr. M. C. CAMERON—(to witness)—Was the first measurement of these vessels made under the authority of the officer of customs? Mr. Wilson, the officer of excise, stated that he had not made it. Davis informed me that he had measured the close receivers. I was told that they were measured.

Hon. M. CAMERON.—It is clear that the apparatus only was spoken of; and not the tubs.

JOHN DUMBRILL, examined by Mr. GALT.—You were station-master at Maitland? Yes. I was appointed about a month after the opening of the road to Brockville, and continued till February 18, 1865.

Look at the way-bill book for Pointe St. Charles—(produced). In whose handwriting are the entries made? Thomas Bowker. He was porter at the Maitland station, and made out all the way-bills.

Were there goods forwarded to answer the entries in this book? Every entry. (Witness here called off the entries, which were verified with the copies put into Court, and found correct.)

Who was the consignor of the goods? Halladay & Co.

How do you know whether the casks here mentioned contained spirits or not? Only by the shipping bill.

On the 9th September do you see there a shipment of what purports to be two barrels of whiskey? Yes.

Hon. Mr. CAMERON.—I do not admit this as evidence. It is merely a statement that he examined the books of the person who kept them.

Mr. GALT.—If my learned friend would have the kindness to wait a few minutes, and give me credit for knowing what I am about, we would get along faster.

Hon. Mr. CAMERON.—We do not wish our case to be prejudiced in any way.

WITNESS.—The spirits were brought there by the teams of Borst, Halladay & Co., or teams they hired. There is no Distillery in the neighbourhood of Maitland nearer than Prescott. The freight mentioned in these bills is all outward. (Here witness read the list, which was put in.) Under date October 15, I find—E. F. Hudon & Co., 21 puncheons of spirits; November 27, P. Arnold, 21 puncheons of spirits; November 9, E. F. Hudon & Co., 21 puncheons; November 14, * * * * M. J. Borst, 21 puncheons of spirits; November 22, M. J. Borst, 21 puncheons of spirits; November 23, M. J. Borst, 10 puncheons, 30 barrels spirits; November 25, M. J. Borst, 20 puncheons spirits, 5 barrels old rye; November 29th, 15 puncheons spirits, 15 barrels whiskey, to M. J. Borst.

Mr. GALT.—Were you acquainted with Mr. Borst? He was Mr. Halladay's partner—was he not?

WITNESS.—Mr. Borst was Mr. Halladay's partner. On the 29th I find Borst Halladay & Co., 21 puncheons. * * * Some were also consigned to Mr. H. Chisholm.

Mr. GALT.—Who is the Mr. H. Chisholm mentioned? There is a Mr. Chisholm, Borst, Halladay & Co.'s book-keeper; I suppose that to be the same man.

Do you know anything of a person named Reid? Is there any one of the name in Maitland? Not that I know of.

Mr. GALT (to the Judge).—A very great deal turns on this; as no less than 25 car loads are sent to this person who has no existence.

WITNESS continued to check the list which was put in and marked "E."

Mr. GALT.—Look at the Railway book for Point Levi.

WITNESS did so, and read a list of the entries from September 6, 1864, to the number "1707." The first entry was a consignment of 21 puncheons spirits to Tessier & Ledroit; the next, under date 24th, to P. Arnold, 21 puncheons spirits. I always understood P. Arnold was agent for the firm. The next was in October, Laird & Co., 21 puncheons spirits; the next, Feb. 8, 1865, another consignment to Tessier & Ledroit.

Who was in the habit of making the shipments? Sometimes the carters; sometimes Mr. Chisholm.

Hon. Mr. CAMERON.—Witness does not know whence they came. (To Witness.) Do you mean to swear that all these goods were brought by Halladay's teams? I have seen the shipping bills, and know that the men were hired by Halladay & Co.

Hon. Mr. CAMERON.—He neither knows of his own knowledge, from whence they came, what they contained, or where they were going.

Mr. GALT.—I propose to call a dozen witnesses, or as many as my learned friends choose, to prove the matter in this way, and then I will do so generally.

WILLIAM BURKETT examined by Mr. GALT.

Where do you reside? Montreal.

What is your employment? I receive the cars from the West.

Do you keep any book by which you check out? Yes.

Will you get the book that you kept in 1864, and look at the entry dated Sept. 10. Do you find any entry with regard to Car No. 3281?

HIS LORDSHIP.—What is the object?

Mr. GALT.—I want to prove by the witness the arrival of the goods in Montreal; and then I shall prove of what they consisted.

Witness.—3281 contained 2 barrels of whiskey. On way-bill 89 I find 21 puncheons spirits and 8 barrels rye.

Look at pp. 132. What do you find? I find 50 barrels rye whiskey; Car 1921, way-bill No. 90, 50 barrels rye.

Look at pp. 185, Car 2882, 21 puncheons spirits.

Look at pp. 226, Car 2454, 21 puncheons spirits, bill 36.

HIS LORDSHIP, in explanation, stated that witness here read the number of the car, way-bill and its contents, which Mr. Galt checked on Schedule "E."

Mr. GALT.—I propose to do this, because there is no use going through every one, and asking have you examined the way-bill in the Schedule to which your initials are attached. (To Witness.) Have you examined the documents carefully? Yes; they are correct.

Mr. GALT.—It is quite unnecessary, I submit, to go through them. To save time I had these lists made out of Court.

Cross-examination by Mr. M. C. CAMERON.—What is the manner in which you check these things? Out of the cars as they come.

What do you check in? In the books.

Do you find the entry in the books? Yes; the night clerk makes the entry.

At what time? All night.

Then you check over the entry made in the book, to see whether the things coming from the car correspond? Yes; and if anything turns out which renders it necessary, we go to the way-bill.

Then you do not see the way-bill? I do; but do not always check the way-bill with the book.

That is at Montreal? Yes.

Mr. GALT.—That book is a copy of the way-bill to Montreal; and I will produce as many books as you like to verify it.

HIS LORDSHIP.—As the goods come out of the car, witness checks them by the books; but he says the goods there charged he did see come from the cars correctly.

Mr. GALT.—Yes.

A. O. R. HUDDALL, examined by Mr. GALT.—Where do you reside? At Montreal.

What is your occupation? At the time between March and April, 1865, I was checker.

Mr. M. C. CAMERON.—This is subsequent to any evidence yet.

HIS LORDSHIP—(To Mr. GALT.)—How far did the last witness verify your copies?

Mr. GALT.—All of the documents produced—as far down as March 11.

Hon. Mr. CAMERON.—That is a month later than the preceding witness.

Mr. M. C. CAMERON—(To Mr. GALT.)—You began at Maitland in February, and ought to continue it.

Mr. GALT.—I hope my learned friend will have a little patience.

HIS LORDSHIP—(To Mr. GALT.)—You are the leader; there are three or four counsel on each side; and you, perhaps, know well that these interruptions are intended to “help” you a little. (Laughter.)

Mr. GALT.—Yes, my Lord.

WITNESS.—I checked out the goods mentioned in the Schedule produced, between the 22nd March and the 12th April.

Mr. M. C. CAMERON.—Did you adopt the same plan as Mr. Burkett? Yes.

Mr. GALT.—Have you seen the way-bills since you came here? I have.

PETER OWENS examined by Mr. GALT.—I reside at Montreal, and am freight receiver there. I began April 12th, and have continued ever since.

Have you examined the entries made in the left hand column of this Schedule? Yes; those I have initialed were handed in. I did not see the books since I came to Toronto.

ALPHONSE DOUTRE examined by Mr. GALT.—Do you produce the way-bills of the Grand Trunk Railway Company? I do; from Sept. 1, '64, to July 1, 1865.

Would you produce the way-bill of February, 1865, No. 26? I produce it.

Cross-examined by Mr. M. C. CAMERON.—What is your duty on the Grand Trunk? Receiving Clerk in the Grand Trunk freight department, Montreal, at Point St. Charles. I am merely to examine the way-bill, in case difficulty arises.

You do not know for a fact that the books produced are the Grand Trunk books? I do and have compared the entries with the corresponding way-bills; the book in which the way-bills are pasted lies in the office under charge of an agent; a little boy pastes them in.

Then you made no entries in the books? No.

J. HEBERT, examined by Mr. GALT:—

What is your occupation? I am Conductor on the Grand Trunk Railroad.

Were you so in February last? I was.

Would you look at way-bill No. 26, car 1577. Is your name on the back of that way-bill? It is.

Do you recognize it as having been once in your possession? Yes, in February last.

Where did you get it? At Maitland.

What did you do with it? Took it to Montreal. I also delivered the car at Montreal.

Would you have the kindness to turn up way-bill 869? I have done so.

Now, Mr. Conductor, did you ever see that bill before? Yes.

Turn to “progressive” number 868 for February. I do so. We have “progressive” numbers for each month.

Did you ever see way-bill 869 before. Yes.

How do you know? Because it has my signature.

Have you examined carefully all the Grand Trunk way-bills from September 1, 1864, down to July 1, 1865? Yes; for the purposes of this trial.

Do you recognize any of these (showing witness way-bills)? Yes, by my signature and memorandum book.

Have you examined the list produced carefully? and can you say that the entries opposite to which your initials are, are correct or not? Yes, they are.

You brought down the cars represented here? Yes.

HIS LORDSHIP.—You never opened the cars? No.

MR. GALT.—Of course the Conductor knows nothing of what is in the car.

WITNESS.—I delivered the cars with the way-bills in Montreal.

MR. GALT.—All you have to do is to check the cars and see that the numbers correspond with the bills? Yes.

You have private memorandums of your own? Yes; I have examined my private books, and find that in all cases I brought down the cars corresponding to these numbers.

HON. MR. CAMERON.—Is that endorsement of your name in your handwriting? Yes.

JOHN STEWART examined by Mr. GALT.

(MR. DOUTRE, at request of Mr. GALT, turned up way-bill No. 125 for March.)

MR. GALT (to Witness).—What is your business? Conductor on the Grand Trunk Railroad.

Look at way-bill 125, progressive number for March. Yes; the number of car is 876. Know the bill by my signature. Brought it to Montreal with the cars.

Your name is opposite a good many entries; have you carefully examined each? Yes. I examined the list by the way-bills and my own memorandums, and swear that I brought each car to Montreal answering to the list here.

HUGH ROBERT FRASER examined by Mr. GALT.—What is your occupation? I am Conductor on the Grand Trunk.

Look at progressive No. 1151 for November, 1864 (addressing Mr. Doutre), and hand it to witness. Mr. Doutre did so.

TO WITNESS.—Did you ever see that way-bill before? Yes.

How do you know? By my name on the back.

You did not bring down many of the car loads entered on the list? No.

Have you examined the list carefully? Yes; and will swear that I brought down the cars mentioned here opposite to which my initials are placed.

MR. M. C. CAMERON.—And you also examined them by your memorandum book? Where is it? In my pocket. It is a private memorandum book.

J. W. STAVELY examined by Mr. GALT.—What is your occupation? Conductor on the Grand Trunk.

(MR. DOUTRE, at request of Mr. GALT, looked up way-bill, progressive No. 772, and handed it to witness.)

Did you ever see that way-bill before? I have not.

Look at your book, and see if you ever saw it before. I have a memorandum of car 3149 from Maitland to Montreal. I took it down to Montreal, and that was the car of which 772 was the way-bill.

At what time? December 16, 1864.

Look at way-bill, progressive No. 2, March, 1865. Did you ever see that before? Yes. I recognize it by my signature on the back.

Have you seen this list (handing witness the schedule already referred to)? Yes, and have carefully examined the items to which my initials are attached. I brought the cars down to Montreal which are represented there. Know nothing of their contents.

J. HEBERT recalled; examined by Mr. GALT.—Have you examined this list with the way-bills?

(Mr. GALT to HIS LORDSHIP.—These are cars brought to Montreal, but sent to Quebec. These Conductors only bring them as far as Montreal.)

You do not run beyond Montreal? I brought the way-bills from Maitland to Montreal.

Mr. M. C. CAMERON.—Do you put your name on the back of those going to Quebec? Yes.

HIS LORDSHIP.—Your name or initials? I put my name.

Mr. M. C. CAMERON.—If you take them no further than Montreal, how is not the name of another Conductor on the back? I do not know. Our orders are to sign all our way-bills. I do not know what the practice is at the eastern end.

Mr. GALT.—You have examined all the way bills to which you put your initials. Yes; and will swear that I brought all the cars thus represented from Maitland to Montreal.

MR. J. W. STAVELY recalled and examined by Mr. GALT.—I have examined the list produced, and know that I brought the cars mentioned in it from Maitland to Montreal.

Mr. M. C. CAMERON.—You do not know what number of names were put in after you saw the list; nor how long the goods remained in Montreal? No.

JOHN STEWART recalled, examined by Mr. GALT.—Have you examined the list produced? Yes; I brought down such of the cars mentioned in it from Maitland to Montreal, as have my initials attached to them there.

Mr. GALT (to the JUDGE).—Now that stock book, my lord, is admitted so far.

HIS LORDSHIP.—What stock book?

Mr. GALT.—The spirit stock book.

HIS LORDSHIP.—How is it admitted?

Hon. Mr. CAMERON.—We allowed a copy to go in.

Mr. GALT.—I propose to show that there were consigned to James Holiday & Bros., 1000 puncheons of spirits, not one of which appeared in the stock book of Borst, Halladay & Co.

ALEXANDER KYLE examined by Mr. GALT.—Are you in the employ of James Holiday & Bro., Montreal? I am,—they are warehousemen.

In what capacity do you act? Clerk.

Did they receive any quantity of spirits from Borst, Halladay & Co.? Yes; between September 1, 1864, and July 1, 1865.

Hon. Mr. CAMERON.—Stop! what particular return—is he going on for a false entry? I say, my learned friend cannot go for a quantity delivered from Sept. to July. He cannot go for more than one offence. He cannot put 20, 40, 50 deliveries in one count; under the statutes I object to any such general statements.

Mr. GALT.—It is invariably the practice to frame the information as this is done.

HIS LORDSHIP.—Mr. Cameron admits the form; but says you can only get one penalty on each count.

Mr. GALT.—The rule in the case is the "Attorney-General against Freer." That was a case of information for penalties, and they recovered £20,000. The court held on that occasion that it had been the practice for ages; and the proper practice; for it would be a scandalous thing if the count for each offence had been separate, and the information drawn on it.

Hon. Mr. CAMERON.—I saw the case, and several others, and think, notwithstanding, that the objection holds perfectly good.

Mr. GALT.—I claim that I am entitled to the 90 cents per gallon for every gallon I prove.

Hon. Mr. CAMERON.—I maintain that the wording of the statute is entirely different from that in the case referred to. The words of the statute only go for one penalty. They are: "Shall forfeit and pay for every such offence a penalty of \$200, together with a further penalty equal to three times the amount of license fees, duty or other impost payable under this act." There are returns to be made every half month. Supposing false returns were made. Anything omitted in the half month comes under the clause, and is subject not merely to the \$200 penalty, but the particular quantity is subject to three times the amount of duty ordinarily leviable. I maintain it must be taken as an offence in reference to each particular thing.

HIS LORDSHIP.—The Crown can recover but one penalty; and Mr. Galt says I am going to prove that from September to July you sold so much more than you returned, and for every gallon thus disposed of he seeks to recover three times the ordinary duty. Now, though the Crown can get but one penalty on one count of one false entry, I think they may recover for the quantity.

Hon. Mr. CAMERON.—My learned friend claims three times the amount of duty on the whole; that is where I say he ought to be confined. Each, we contend, must be taken separately.

HIS LORDSHIP.—I agree with the objections as to the recovery of the penalty for one false entry and recovery on each count; but will at present allow the Crown to prove the quantity of spirits not returned during the whole period.

Mr. M. C. CAMERON.—It goes also to the recovery of all that is shown.

HIS LORDSHIP.—Undoubtedly.

Mr. S. RICHARDS.—As to the stock book, we say that there were no regulations—that there was nothing in the form of the book to show distinctly when the entries were to be made. But a certain date is given in order to show how

much is shipped on each particular day. Now, if to-day 20 puncheons were shipped by Borst, Halladay & Co., and not entered, they say that a penalty of \$200 and three times the amount of duty is forfeited in respect to the article of which there is the non-entry. Say to-morrow another load is not entered, the same penalty again attaches to the goods in respect to which the non-entry takes place. For each offence the penalty is claimed. We say they charged only one offence under the statute—only one penalty attaches—and they cannot add these different penalties and call them one.

HIS LORDSHIP.—You repeat what your leader has said before you. The statute contemplates two classes of wrongs for which penalties can be recovered. One is for non-entry; the other is for selling from the distillery without first paying duty, on which quantity three times the usual duty is recoverable; and I think they are not confined in that case to each specific instance. In my present view of it, the Crown can at any time recover three times the duty on any quantity on which they choose at any time to bring information.

MR. RICHARDS.—For every neglect to enter in the stock book the Crown can recover one penalty and three times the value of the spirits not entered.

HIS LORDSHIP.—At present I think the Crown can recover.

Examination of Mr. ALEX. KYLE resumed by Mr. GALT.—Between September 1, 1864, and July 1, 1865, what quantity of spirits consigned to you from Borst, Halladay & Co. was received in the stores of James Holiday & Bro.? One thousand puncheons.

What is the average contents of a puncheon of spirits? They vary greatly; ranging from 100 to 130 gallons. Could not exactly state the average of these. The spirits was delivered to parties in the city.

Were orders given for the delivery? On some occasions I got orders. (Witness produced the warehouse receipts.)

Are you acquainted with the signature of Borst, Halliday & Co.? Yes; I think the document shown me bears Mr. Halladay's signature. The order produced was for 105 puncheons of high wines 'or Borst, Halladay & Co. Mr. Arnold got the spirits on the order of Borst, Halladay & Co.

MR. GALT.—Here is another warehouse receipt, dated Dec. 8, 1864, for 102 puncheons high wines belonging to Borst, Halladay & Co. To whom was that delivered? Could not say.

It is endorsed Borst, Halladay & Co.? The spirit was delivered out on an order, to Borst, Halladay & Co.

I put in an order of the 16th Dec., 1864. (To Witness.) If a person brought you that order would you deliver up the spirits? Yes.

This order was for 105 puncheons. The next is dated March 2, 1865, 209 puncheons. To whom were these delivered? Cannot say.

There is the endorsement of Borst, Halliday & Co. on the back of it. Then here is another, dated April 20, 1865, for 105 puncheons; and the next is of the 17th April, for 42 puncheons high wines. Were these delivered? Yes.

Here is one of the 26th June, 1865, for 42 puncheons high wines; again, on June 29, 1865, 105 puncheons. It reads thus :—

" March 24, 1865.

" Messrs. Holiday & Bro.

" Please deliver to our order 105 puncheons of spirits, and oblige

" BORST, HALLADAY & Co.

" Per ARNOLD."

That is an order for delivery. Here is another dated December 28 :

" Messrs. Holiday & Bro.

" You will please deliver to Messrs. Middleton & Laidlaw 21 puncheons of spirits."

WITNESS.—The order for the 105 puncheons is contained on one of the receipts.

What was the strength of that spirit? Cannot say.

Do you know the strength of high wines? 50 over proof (o. p.)

How many barrels did you deliver out of that store between the 1st September, 1864, and the 1st July, 1865? You say you received 1000 puncheons. How many did you deliver? We delivered all.

Cross-examined by Mr. M. C. CAMERON.—Were Borst, Halladay & Co. in the habit of storing with you? Yes. They engaged the store. It was partly their own storehouse; and what they stored was as in their own store. Before September 1 they had a quantity there.

HIS LORDSHIP.—How many of the 1,000 puncheons had been received and were there before September 1? The 1,000 puncheons came in after September 1.

What did you get before? 221 puncheons.

Mr. M. C. CAMERON.—Were they only storing with you for one year? They commenced in July, 1864.

How did these puncheons come to the store? By the Grand Trunk carters generally. I think nearly the whole of it. I was not the person who used to receive it; but knew how it came, because we had to give acknowledgments to those from whom we received it.

To whom did you give these warehouse receipts? To the carters.

Has Halladay an establishment in Montreal for the sale of liquors? I think Middleton sold for him and some on his own account. I know that Borst, Halladay & Co. had liquor stored with us. Never tested its quality. Do not know whether or not it was 50 o. p. The receipts produced do not denote the time I received the quantity. The case was simply, if I had the quantity in store they called for, I gave it out.

JOHN MACDONALD examined by Mr. ANDERSON.—You are a merchant residing in Montreal, I believe? Yes.

Did you, between September 1, 1864, and July 1, 1865, receive spirits from the Maitland Distillery? Yes.

Can you tell us what quantity? Witness (after looking up his invoices, said)—I only received two loads. One on the 4th January, 21 puncheons, and one on the 4th June, 1865, 42 puncheons.

What number of gallons would they together make up? Between 6,000 and 7,000 gallons. They make up 7,445 gallons.

What strength was it? I bought it for 50 o. p.

That would be equal to one-half more of proof spirits? Yes.

How did you get it? The first load was direct from Maitland, and the other from Holiday & Bro., on Arnold's order. These are the only two purchases I made direct, and that the strength.

Mr. M. C. CAMERON.—How did you test the strength? By McCarthy, the cooper.

How did he do it? In the usual way. According to Syke's hydrometer the strength appeared to have been correctly stated. He put the hydrometer in and another instrument.

Mr. GALT.—Are these your invoices—(producing them)? The handwriting on one is that of Mr. P. Arnold, agent for Borst, Halladay & Co. Also on this other. It reads:

“ Mr. J. McDonald,
“ Bo't of Borst, Halladay & Co.,
“ 21 puncheons 50 o. p. spirits, 80c.”

It is signed Borst, Halladay & Co., per Arnold.

JOHN ELLIOTT, examined by Mr. GALT.—Did you buy any spirits from Borst, Halladay & Co. between September, 1864, and July, 1865? Yes. Here are my invoices. The signature on one is that of Mr. P. Arnold. It is signed Borst, Halladay & Co., per Arnold.

Mr. GALT (reading from invoices).—It is dated May 15, 1865, and is for 2,664 gallons. Of what strength? I bought it for 50 o. p.

M. GALT.—That would be in proof gallons 3,996 gallons? The next is dated May 1, 1865, and is for 20 barrels rye, 974 gallons; strength about 30 u. p., or about 680 gallons proof. Yes.

On the 27th April how much did you purchase? 50 puncheons, equal to 5,988 50 o. p.

Who did you pay for it? Mr. Arnold, for Borst, Halladay & Co.

On the 23rd March, 1865, there were 21 puncheons, 2,508 gallons, amounting to 3,762 gallons proof spirits. Yes.

On the 17th March 21 puncheons, 2,487 gallons, 50 o. p.; equal to 3,730 gallons. To whom did you pay for this? Borst, Halladay & Co., per Arnold.

The next was on the 9th March, bought of Borst, Halladay & Co., 55 barrels, containing 2,618 gallons, 50 o. p., amounting to 3,927 gallons? Yes.

The next was on the 7th January, 1865, bought of Borst, Halladay & Co., 2,477 gallons, 50 o. p., equal to 3,715 gallons. Yes.

Then on the 28th November, 1864, 10 puncheons and 30 barrels were bought. The 10 puncheons came to 1,179, 50 o. p. The 30 barrels amounted to 1,460 gallons, 50 o. p., together making 2,639, equal to 3,958 proof gallons.

WITNESS.—That was paid to Borst himself.

Cross-examined by Mr. M. C. CAMERON.—Did you get this liquor from the Distillery direct, or from Montreal? In Montreal, from Arnold. They were delivered to me from the Grand Trunk.

You did not get anything from Holiday & Bro.? No; the spirits were all delivered to me by Grand Trunk carters.

As to strength you know nothing personally? No.

Mr. GALT.—But you paid for the spirits at 50 o. p.? Yes.

CHARLES CHAPUT, examined by Mr. GALT.—Between September, 1864, and July, 1865, did your firm buy any spirits from Borst, Halladay & Co.? Yes. The first date was on the 12th September, 1864. (Witness produced his invoices) It was for 21 puncheons, 2,445 gallons.

What did you buy that as? 50 o. p. \$6.84 was deducted in payment, the price of about 8 gallons.

On the same invoice (though not entered in the stock book) there are five barrels of rye, 236 gallons. From these, 59 gallons would have to be deducted, making 177 gallons proof spirits? Yes. It is signed by Borst, and was received from Borst, Halladay & Co., The next invoice is November 17, 1864, 2,507 gallons, 21 puncheons.

Mr. GALT.—Also 224 gallons old rye, or 158 gallons proof spirits? Yes.

What is the next? January 4, 1865, 21 puncheons, 2,490 gallons.

This is not entered in the stock book. There are also 226 gallons old rye, or about 170 of proof? Yes.

What is the next? February 1, 2,363 gallons, bought of Borst, Halladay & Co., per Arnold. On the 23rd March, 21 puncheons, 2,524 gallons; on the 27th, April, 2,451½ gallons; and on the 26th June, 2,491 gallons.

Mr. GALT (to His Lordship).—I say that the following items of those specified have not been entered in the stock book. The first, the 27th April, 2,451 gallons; the 26th June, 2,491 gallons; and that of the 4th January, 1865, 2,490 gallons; in all, 7,432 gallons o. p. spirits, with the 171 gallons rye, converted into proof. This would equal 11,319 gallons in all not entered in the stock book.

Where did you buy these spirits—(to witness)? With the exception of a few car loads, from Maitland.

What quantity did you get from Holiday & Bro.'s stores? Could not tell.

Who delivered it to you? At one time Mr. Arnold himself delivered it to us. You do not know where he got it? No.

Did you get any orders direct on J. Holiday & Bro.? No.

Cross-examined by Mr. M. C. CAMERON.—What quantity did you get from Maitland direct? We did not get altogether more than 42 or 63 puncheons. We generally purchased through Arnold; sometimes from Borst, when he was in town. We purchased from Arnold in Montreal, and tested the quality.

Yourselves? I do not remember testing every car load.

What did you find it? Sometimes 49 o. p. in the case of 2 or 3 car loads. The rest was, I think, 50 o. p.

How many cars did you test? Sometimes we used to take McCarthy to test for us.

Did he not really test all the time for you? (No Answer.)

HIS LORDSHIP.—Is McCarthy a reliable man? Oh, yes.

Mr. GALT.—(To opposite Counsel)—Do you wish me to produce the way-bill books any more?

Hon. Mr. CAMERON.—We do not know yet.

LOUIS TOURVILLE, examined by Mr. GALT.—Did you purchase spirits from Borst, Halladay & Co.? Yes, for the firm of Tourville, Gauthier & Co. (Invoices produced.)

This one (showing witness) is dated 25th Feb., 1865, 21 puncheons, 2449 gallons, 51 o. p. From whom did you purchase that? Borst, Halladay & Co.

The next you purchased was at same date? Yes; 2 car loads amounting to 4893 gallons, including the before-mentioned. This was 50 o. p.

What did you do in March? On the 2nd, we got 2,445 gallons, 50 o. p., from Borst, Halladay & Co.; on the 24th, 21 puncheons, 2,511 gallons, 50 o. p.; April 11, 21 puncheons, 2,474 gallons. That was received, per Arnold, 13th April, 21 puncheons, 2,484 gallons, 50 o. p. 15th April, 2,454 gallons, 50 o. p. This was also received per Arnold, who receipted for the payment in all these instances. May 6, 20 puncheons, 2,350 gallons, 50 o. p.; payment receipted per Arnold; 13th June, 1865, 21 puncheons, 2,486 gallons, 50 o. p.; also with Arnold's receipt of payment; June 19, 1865, 100 puncheons, 11 859 gallons, 49 o. p., equal to 11,779 gallons, 50 o. p.; payment receipted in same way. Got this lot from Borst. In proof gallons the total amount would be 50,836.

Mr. GALT.—(To opposite Counsel)—Do you consent to these Gentlemen (witnesses) giving evidence now in this way, and leaving their invoices in Court to be used at a future time?

Mr. M. C. CAMERONS—We won't say anything about that now. (To witness) How was this liquor delivered to you? By the Grand Trunk carters, except the last lot, which came from Holiday & Bro.'s place. It was 100 puncheons.

Did you test it? McCarthy generally tested it all; but I tested it all after him to see whether or not it was correct.

At this stage (6 o'clock, P. M.) the Court adjourned till following day.

SECOND DAY'S PROCEEDINGS.

TUESDAY, January 9, 1866.

(Before Hon. JUSTICE JOHN WILSON.)

Court opened at ten o'clock, A. M.

The first witness called was:—

Mr. A. JOSEPH, examined by Mr. GALT.—Are you President of the Board of Trade, Quebec? I am.

Have you purchased spirits of Borst, Halladay & Co.? Yes; generally from Arnold.

Have you got the Invoice? Yes; I have here an invoice of the date Feb. 20, 1865, 63 puncheons of high wines, containing 7,447 gallons, 50 o. p., giving 11,170½ gallons proof spirits. I have a consignment of Toddy

whiskey, 25 under proof (u. p.) 5,184 gallons, contained in 110 casks. It was about 3,888 gallons proof. These were consigned to me, and sold by me, and paid since to Borst, Halladay & Co.

Did you pay to Arnold, or direct? I think they drew for the amount.

HIS LORDSHIP.—What did you find the average of the puncheons? 110 to 120 gallons.

MR. RICHARDS.—Where did you buy the spirits? From Arnold.

At Quebec? I think so.

What did you say the 63 puncheons contained?

HIS LORDSHIP.—7,447 gallons, which reduced to proof, make 11,170½ gallons.

MR. RICHARDS.—In your invoices is anything said about 50 o. p.? No.

Do you gauge the liquor yourself? No.

Do you test the strength of it? I do not.

MR. GALT.—But it was sold to you as 50 o. p.? Yes.

MR. M. C. CAMERON.—The invoices before stated when it was o. p.; and if we are held by the invoices in one case, we ought in the other.

HIS LORDSHIP (to witness).—You paid for it as o. p.? Yes.

MR. RICHARDS.—You do not know where it was manufactured? I do not personally know. It was stated by Arnold to have been manufactured at Maitland.

MR. LOUIS BOURGET, examined by Mr. GALT.—Did you purchase any spirits from Borst, Halladay & Co.? 21 puncheons; strength 50 o. p.

To whom did you pay for it? To Arnold.

(Invoices produced.)

MR. GALT.—This invoice is for 2,469 gals. 50 op., dated 11th May, 1865; or equal to 3,703½ gals. proof? Yes.

MR. M. C. CAMERON.—Did you test it yourself? No.

Where did you make the purchase? In Quebec.

Did you ever purchase before from that firm? Yes.

How do you recollect this particular transaction? Because the invoice tells me. I never purchased except from Arnold, and always in Quebec.

Can you, in the course of your business, tell a particular manufacture of whiskey? No.

You could not tell whether you bought any particular liquor in the market or not? No.

MR. GALT.—Who gauged the whiskey? Mr. Fraser.

HIS LORDSHIP.—Did Arnold state where it was made? No.

A. LEDROIT examined by Mr. HARRISON.—Are you a member of the firm of Tessier & Ledroit? Yes.

Have you bought any spirits from Borst, Halladay & Co.? I have—through Arnold. (Invoices produced.) On the 22d Sept., 1864, we got 21 puncheons, 50 o. p., 2,489 gals.

Next? On the 11th Feb., 1865, 21 puncheons, 50 o. p., 2,471 gals.

Next? May 12, 1865, 21 puncheons, 50 o. p., 2,517 gals. There is another, May 13, 93 gals., 50 o. p.

HIS LORDSHIP.—What is the total? 7,570 gals.
Reduced? 11,355 gals.

Cross-examined by Mr. M. C. CAMERON.—Did you make the purchases yourself? By myself or Mr. Tessier. Both of us recollect the purchase of each lot distinctly. Without looking at your papers, tell us the circumstances distinctly. What date was the first purchase? 22d Sept.
And the last? In May.

Mr. M. C. CAMERON.—No; you said you recollected the purchases distinctly. WITNESS.—The last lot of puncheons was purchased by myself; or, rather, the last purchase was made by Mr. Tessier in my presence.

Mr. M. C. CAMERON.—Did you ever buy anything more? Yes.
Were you ooth always present? Yes; we both consulted.

Was one of you ever absent? Very seldom.

What was the first bargain about? 21 puncheons at 50 o. p.; I think the rate was $87\frac{1}{2}$ cents; three months' time.

What was the agreement with reference to the next purchase? It was for 21 puncheons in Feb., 50 o. p., at rate of $82\frac{1}{2}$ cents; three months.
Was that to be o. p.? Yes, 50.

This invoice does not say so; and the invoice prices differ from yours. Do you recollect making the bargain? Yes; quite distinctly.

What date did you ever purchase more from him, besides the three lots? That was before the 1st of September?

Mr. M. C. CAMERON.—That is broad time, and may extend back 1800 years. Cannot recollect anything about the transaction.

Then you speak in this case from what the papers show, and not from recollection? I recollect these lots, and am helped by the invoice.

In one instance your invoice says nothing about o. p.; and in another instance it does. Did you test the spirit? No.

Do you know where it was manufactured? We got the three lots direct from the distillery. The puncheons we got from Arnold. We bought the whiskey from Arnold, and it came direct from the distillery.

How do you know it came direct from the distillery? It was consigned from Maitland.

How do you know? Are these papers (invoices) the evidence? No.

These invoices do not show the transaction? No. The liquor was consigned to us, and we had the bills of lading, and supposed that it came from Maitland. I think we have still got the bills of lading at Quebec.

Can you tell us whether the liquor came by the cars or by steamboat? By the cars in the winter and fall.

They sent by the cars in summer as well as winter? Yes.

Did you ever test Halladay's whiskey? Was it all alike? Yes.
Is all whiskey alike? Pretty much. [Laughter.]

JOSEPH LAIRD examined by Mr. HARRISON.—You are a member of the firm of Gibb, Laird & Co., and do business in Quebec? Yes.

Did you have any transactions with Borst, Halladay & Co. for whiskey? Yes.

Since the 1st of Sept., 1864? Yes.

What was the first time then? From my invoices I see it was on the 17th Oct., 1864, 21 puncheons, 50 o. p., 2,498 gals. net.

Next? On the 20th Feb., 1865, 21 puncheons, 50 o. p., 2,469 gals.

Next? March 8, 1865, 42 puncheons, 50 o. p., 4,964 gals. Then, May 13th, 21 puncheons, 50 o. p., 2,533 gals.

What is the total number of gals.?

HIS LORDSHIP.—18,696 proof.

MR. HARRISON.—Are these the original invoices? Yes.

From whom did you make your purchases? Partly from Arnold and partly by correspondence with Borst, Halladay & Co., at Maitland.

Which of these was by correspondence? The three first; the last, to the best of my recollection, was made with Arnold. Could not say where the last one came from.

HIS LORDSHIP.—Did they come by the cars from Maitland? Cannot tell how the last came.

Cross-examined by Mr. M. C. CAMERON.—Did you make the bargain yourself? I think the letters were written by me.

Do you know the strength of the spirits? I tested it myself in several instances, and found it 50 o. p., except in one small instance. When the spirit was received we generally tested it in the office.

What process did you put it through in testing it? I first took the temperature of the spirit, and then put in the hydrometer. I generally took a sample out of five.

In only one of the invoices is there anything said about its being o. p.? Can you say you tested any except the particular one professing to be o. p.? Yes.

Which? The 42 puncheons.

When? In March.

Had you been dealing with this firm before? Yes, through Arnold.

Did he call on you to solicit orders? Generally.

And you do not know their whiskey from any other? No.

MR. N. G. MOUNTAIN examined by Mr. HARRISON.—Are you son of N. G. Mountain, Quebec? Yes.

What is your father? Merchant in Quebec.

Has he had any transactions with Borst, Halladay & Co. since Sept., 1864? He had, on May 5, 1864.

MR. HARRISON.—(to Witness).—We are talking of since Sept. Let me see your invoices. (Invoices produced.) In whose handwriting is that memorandum produced? My father's. These are the only two invoices I have.

MR. M. C. CAMERON.—Why did you give him his father's handwriting?

MR. HARRISON.—I did so to help his memory—not to make evidence. (To Witness.) These invoices are both in May? Yes.

MR. M. C. CAMERON.—Did you ever, on the contrary, instead of buying, sell them any liquor? I do not believe we ever did.

EDWARD CAHILL examined by Mr. HARRISON.—Are you a member of the firm of Robt. Shaw & Co.? Yes.

* You do business as merchants in Quebec? Yes.

Has that firm had any transactions with Borst, Halladay & Co. since Sept., 1864? Yes; the first was on Sept. 30, 10 puncheons spirits, 50 o. p., 1,132 gals.

Next? 23rd May, 1865, 10 puncheons, 50 o. p., 1,226 gals.

Total? 2,358 gals.

Have you the invoices? Yes.

From whom was this spirits purchased? From Arnold.

From what place? Cannot say.

Did you receive any advice notes with it? No; it was delivered to us at Quebec.

Cross-examined by Mr. M. C. CAMERON.—Did you buy it in your establishment? Yes.

Had Borst, Halladay & Co. a warehouse at Quebec? Yes. Arnold told me they had a store. Part of it came from that store.

Did you speak from the invoices or your recollection of the transaction when you spoke of 50 o. p.? From the invoices.

Do the invoices represent it as o. p.? I speak from the transactions in that matter.

The papers do not express it to be o. p. Did you make both purchases? Yes; from Arnold, and he gave me to understand he had a store at Quebec.

HENRY GLASS examined by Mr. HARRISON.—Are you member of the firm of Langlois & Glass? Yes.

Merchants at Quebec? Yes.

Had you any transactions with Borst, Halladay & Co. since Sept., 1864? Only one; on the 15th May, 1865, 21 puncheons, 50 o. p., 2,499 gals.

HIS LORDSHIP.—From whom did you buy it? From Arnold.

Mr. HARRISON.—Do you know from what place it came? No; except that it came from the Grand Trunk.

Did Arnold tell you where the whiskey was manufactured? No; but it was represented as Borst, Halladay & Co.'s whiskey.

Did he represent it as such on any occasion? He often explained that it was manufactured at Maitland. This was in other transactions.

Mr. RICHARDS.—Did he make any representation with regard to this spirits? No.

Mr. HARRISON.—But it was understood all the time? Yes.

PETER ARNOLD, examined by Mr. GALT.—Where do you reside? At Maitland.

Did you act as agent for Borst, Halladay & Co.? Yes.

Are you acquainted with Mr. Halladay's signature? Yes.

Are you acquainted with the handwriting of W. H. Chisholm? Yes.

What was he? He was clerk.

Is that his handwriting? (Handing witness a document). I should think it was.

Are you acquainted with the handwriting of Mr. Wilson, the Collector of Inland Revenue? Yes.

Could you, on your oath, say that this is Mr. Chisholm's handwriting? No; I could not, on my oath, say it was.

Mr. GALT—(to His Lordship)—I am now going to prove the half-monthly statements, one by one; as a matter of form they were obliged to make returns whether they mashed or not. They did not mash for the first half of September, 1864.

WITNESS.—It resembles his handwriting. But I could not say positively it was his.

Mr. GALT—(To His Lordship)—These are the sworn returns to the Excise officer of the quantity made at these respective dates. They are all of the same character. (To Witness)—Do you know Mr. Lawrence Link's handwriting, (handing him a document)? That resembles it.

Can you not, in any instance, swear to Mr. Wilson's handwriting? No.

Was not Mr. Wilson the Collector of Inland Revenue, and was not that document signed by him as such? It is signed in his name. The handwriting resembles his.

What document do you now hold? It is the excise return for the last half of September, and is signed L. Link.

The next return is for the first half of October. Whose handwriting is that signature in it? Halladay's.

It is sworn to before Mr. Wilson, Collector of Inland Revenue, signed by L. Link, and attached thereto is the affidavit of S. S. Halladay, as follows:—

"I, Sherman Smith Halladay, do solemnly swear that the account within written, to which I have subscribed my name, is true according to its purport; so help me God. S. S. Halladay."

WITNESS.—(To His Lordship)—My belief is that the signatures are theirs, but I do not swear positively.

Mr. GALT.—Now, the return for the last half of October, 1864, what is it? I have it.

HIS LORDSHIP.—Who is it signed by? W. E. Elliot and W. H. Wilson.

HIS LORDSHIP.—Who was Elliot? The man that weighs the meal at the Distillery.

Mr. GALT.—Does that return show any quantity of spirits as made in that half month? Yes; 2,115 proof spirit gallons.

Whose handwriting is the signature to this other affidavit in? Halladay's.

It is sworn to before Mr. Wilson and is of the same purport as other affidavits. (Paper put in and marked "H. 4.")

HIS LORDSHIP.—That is the return for October, 1864? Yes; Elliot only swore to the grain. Halladay swears to the spirits.

Mr. GALT.—Look at this admitted copy of the stock book and say what amount is there marked as taken from the close receiver in that time? 2,115 gallons.

Look at the return for the first half of November, 1864. By whom is it signed? I should say it was Halladay's signature on the back. Inside it is signed by W. E. Elliott.

Mr. GALT.—The affidavit in this case is also sworn before Mr. Wilson. They

are all exactly of the same character. All I am proving is Mr. Halladay's handwriting. That is all I called the witness for. They are the returns made to Government.

What quantity of spirits appears on that return? 4,316 gallons.

Mr. Halladay's affidavit is also attached. (Document put in and marked "H. 5.")

WITNESS.—This other document I am handed is the return for the last half of November.

HIS LORDSHIP.—Is it signed as the last one? Exactly the same on front and back. It specifies 17,971 $\frac{2}{100}$ gallons proof. (Put in and marked "H. 6.")

WITNESS.—This document I am now handed is the return for the first half of December, and is exactly the same in the signatures.

MR. GALT.—Does it correspond with the entry in the copy of the stock book? Yes. It is for 19,289 $\frac{9}{100}$ gallons. (Put in and marked "H. 7.")

WITNESS.—This document I now hold is the return for the last half of December. It is signed in the same way, by the same parties, and specifies 24,003 proof gallons. It corresponds with the entry in the stock book. (Put in and marked "H. 8.")

Examination continued by Mr. ANDERSON.

WITNESS.—The document I hold is the return for the first half of January, 1865. It is signed in the same way, and is for 10,420 proof gallons.

It corresponds with the entry in the stock book. It is 10,420 there.

WITNESS.—This return is for the last half of January, is signed the same as the others, and is for 17,022 gallons. It is 17,022 gallons in the stock book. I made the entry from the return in the stock book, and where the fraction exceeded half a gallon, I returned it as one gallon, and where it was less than half a gallon did not count it. This next return is for the first half of February, and is signed in the same way. It is for 17,920 $\frac{9}{100}$ gallons. The stock book gives 17,920 gallons. The duty is paid on the return, not on the entry in the stock book. The next return is for the last half of February, and is signed same way. It is for 20,165 $\frac{4}{100}$ gallons. In the stock book it is 20,166 gallons, being a difference of half a gallon. The next is for the first half of March. It is signed same way. It is for 16,429 $\frac{2}{100}$ gallons. In the stock book it is 16,430 gallons. The next is for the last half of March. It is signed in the same way, and is for 18,584 gallons. In the stock book the entry is 18,584 gallons. The next return is for the first half of April. It is signed in the same way, and is for 15,533 $\frac{2}{100}$ gallons. In the stock book, it is 15,533 gallons. (Put in, and marked "H 15.") The next return is for the last half of April, signed in same way, and is for 10,697 $\frac{2}{100}$ gallons. In the stock book the entry is 10,698. The next return is for the first half of May, is sworn to in same way, and is for 11,258 $\frac{2}{100}$ gallons. The stock book gives 11,258. The next is for the last half of May, is signed same way, and is for 13,274 gallons; same in stock book. The next is for the first half of June, signed as before, the number of gallons 11,511 $\frac{5}{100}$; stock books, 11,511. Then the second half of June, 10,984 $\frac{2}{100}$ gallons; stock book, 10,984 gallons. Then the first half of July, signed as before, for 9,230 $\frac{2}{100}$ gallons; stock book, no entry.

Mr. GALT.—I want to prove the entries that appear in the stock book. (To witness.)—Have the goodness carefully to look through this book and see whether your name appears, and if it does, say so. (To the Court.)—I have now proved the spirits returned as taken from the close receiver; and I want next to prove what they took credit for, to whom sold or transferred, mode of conveyance, where warehoused, &c.

WITNESS having looked at the documents handed him, said :—There is one entry.

Mr. GALT.—Oh, that is to Maitland. I mean to Montreal or Quebec. See if any other quantity appears entered to you in the stock book. I do not see any. There is only an entry of a small quantity of whiskey for my own use.

Are you acquainted with a person named W. Reid? I am not.

Did you ever see that order before? (handing witness order)—Is that not your own writing? I think I have seen it before. It is not my writing.

Mr. GALT.—This is an order in the following terms :—

“GRAND TRUNK RAILWAY.

“Please deliver to P. Arnold what whiskey may be consigned to me.

“(Signed)

W. REID.

“MAITLAND, January 21, 1865.”

Mr. GALT.—Do you find W. Reid's name or the name of Holiday & Bro. entered in the stock book? I see “J. W. Read, 150 packages.”

That is not the same name. You do not see W. Reid's name? I do not.

Do you see the name of Holiday & Bro.? I do not.

HIS LORDSHIP.—You see no entry in the stock book of a sale to W. Reid or Holiday & Bro.? I do not.

Mr. GALT.—Look at this receipt. It is dated January 21, 1865, Grand Trunk Railway. Did you ever see that before? It is my handwriting.

Mr. GALT.—It is an order for the delivery of 21 puncheons of spirits consigned to W. Reid, Montreal. The order is from Borst, Halladay & Co.

WITNESS.—The order to deliver to Cuvillier & Co. or order (part of the document) is in my handwriting.

Mr. GALT.—You received those spirits? Yes.

What was the strength? They usually run about 50 o. p. That is what we sold them for. (Document put in, and marked “K 1.”)

Look at this (handing him another document, marked “K 2.”) Is that your handwriting? Yes.

It is: “Grand Trunk Railway, January 23, 1865. Received from Borst, Halladay & Co. the undermentioned property, in apparent good order, 21 puncheons of spirits for delivery to W. Reid, Montreal.” This is a receipt note which is endorsed over and sent to the consignees.

Was not that order which was read the one on which you got that and all other consignments made to W. Reid? I could not say.

Was it not on that order that you got these 21 puncheons spirits? If not, on what authority? I cannot say whether there was more than the one order or not.

Unless on that order, what business had you to receive the spirits? I might have had another order.

Who was W. Reid? I do not know who he was. He was an American who bought a lot of liquor from us.

Did you ever see him? No.

Did you receive many packages of spirits consigned to him? I did.

HIS LORDSHIP.—Any definite number? No reply.

MR. GALT.—Under whose instructions did you receive these spirits, Mr. Arnold? Instructions from Borst, Halladay & Co., to receive, sell and keep the proceeds of them separate from other sales.

Those spirits, I presume, were bought from Borst, Halladay & Co.? Yes.

Is that the order on which you received the spirits consigned to W. Reid? I could not say whether I received any on it or not? I did receive an order from Reid, but cannot say whether this is it or not.

Did you ever receive any other order of Reid's but the first one showed you, signed by Reid? I could not say I received even this order.

You received the spirits consigned to W. Reid? Yes.

That will do: whether you received them on the order or not.

WITNESS.—In these cases the bills either were endorsed to me, or there was an order or orders.

What was the average size of the puncheons? They usually run from 112 to 132. Strength? Usually 50 o. p.—some 20 under.

MR. GALT.—(to the Judge).—Has your Lordship got the quantity of the second order I produced—21 puncheons? The date of this next one is January 23, 1865. It is—"Received from Borst, Halladay & Co. the undermentioned property, addressed to W. Reid, Montreal." (Document put in.)

WITNESS.—I received the 21 puncheons mentioned and sold them.

TO HIS LORDSHIP.—I was to send the proceeds of the sale back to Borst, Halladay & Co., and they were to communicate with Reid.

MR. GALT.—That makes 63 puncheons spirits, so far. Look at this (handing witness document marked "K. 3.")—It is the same sort of document, for 21 puncheons. I received the spirits.

Here is another (marked "K 4."). It is for 21 puncheons. I received and sold them.

HIS LORDSHIP.—A car load? Yes.

MR. GALT.—Here is one (marked "K 5.") for 21 puncheons; and another ("K 6.") for 21 puncheons, 5 barrels, all consigned to Reid. I received it all, I think—that is, gave orders for it.

Here is another ("K 7.") for 21 puncheons, 5 barrels; another ("K 8.") 21 puncheons; ("K 9.") 21 puncheons and 2 kegs old rye. Did you receive these? Could not say. No doubt I did.

You have got an order for the whole. Have you any doubt you received it? I think I received it. Could not say positively.

Here again—"K 10.")—21 puncheons. Do you believe you received that? I think I did.

"K. 11," 21 puncheons. Any doubt as to receiving that? I think I received them.

"K. 12" is different. It is an advice note to Reid of the arrival of spirits, on which Arnold writes to deliver them to a person in Montreal, E. Hudon. Now, I am going to put in a number of other similar documents, all of them specifying quantities of spirits consigned to Arnold himself.

WITNESS.—I could not say how many puncheons I received in this way. I had shipped to me a large quantity on which a large amount of duty was paid. I got the 21 puncheons mentioned in "L. 1." Unless some of the other documents put in contained the number of the car, I got that quantity in addition to the rest. I also received and sold, I believe, the 21 puncheons mentioned in "L. 2," and the same quantity mentioned in "L. 3." Either myself or Borst received them.

To HIS LORDSHIP.—A cask is usually 50 gallons, but I think all these consignments were puncheons.

Mr. GALT then handed witness the documents "L. 4" to "L. 9," each of which specified 21 puncheons, consigned to Arnold.

WITNESS.—"L. 10" was for 20 puncheons; "L. 11" and "L. 12," 21 puncheons each; "L. 13," 20 puncheons and 10 barrels; "L. 14," 21 casks, 3 barrels; "L. 15" to "L. 24," 21 puncheons each. I did not receive this whiskey.

Mr. GALT.—No; but you disposed of the whiskey it represents.

WITNESS.—L. 25, 21 puncheons; L. 26, 55 barrels, about 1,112 gallons, or 12 puncheons; it was 20 o. p.; L. 27, 63 puncheons; L. 28 and L. 29, 21 puncheons each; L. 30, 55 barrels, or about 12 puncheons; L. 31 and L. 32, 21 puncheons each; L. 33, 21 puncheons, 5 barrels; L. 34, 21 puncheons; L. 35, 21 puncheons, 4 barrels; it has my signature opposite it; L. 36, 21 puncheons; L. 36 and L. 37, 21 puncheons each, with my signature; L. 38 and L. 39, 21 puncheons each.

HIS LORDSHIP.—Till you call my attention to it, I will assume that all these have your signature.

WITNESS.—These are all signed by me. I received those opposite to which my name stands. L. 40 and L. 41, 21 puncheons each; L. 42, 21 puncheons, 4 barrels alcohol. The latter four barrels would equal about a puncheon. L. 43, 21 puncheons, 5 barrels; L. 44, 21 puncheons; L. 45, 55 barrels old rye, equal to 11 or 12 puncheons; L. 46, to L. 51, 21 puncheons each; L. 52, 42 casks. The latter has not my signature, though it looks like my signature on the shipping bill. L. 53, 10 puncheons, 35 barrels.

HIS LORDSHIP.—Is that signed by you? It is. Then there is L. 54, 55 barrels, about 14 puncheons.

Mr. GALT—(to His Lordship)—There are, in all, 85 car-loads sent to Arnold, exclusive of Reid's and Holiday's, as appears by the Grand Trunk books. (To Witness.) Could you not tell us the number of puncheons received? I have not got any memorandum with me.

Mr. GALT (addressing the Bench).—There are a great many car-loads for which he has not got these documents.

Mr. DOUTRE recalled :—

In reply to Mr. M. C. Cameron, His Lordship explained :—Witness speaks definitely only to 54 car-loads; but there were, Mr. Galt says, some 85 car-loads, and he wishes to prove by Mr. Arnold, when he sees his signature, the difference.

Mr. M. C. CAMERON (to Mr. Galt).—How do you know that these loads which you are proving now are not identical with those proved already?

Mr. GALT.—These lists have been proved by the checkers, who checked out the goods to answer for every entry. I have a statement where I have marked what has been given in, in the shipping list (handing Mr. Anderson a list). Look under date February 27, 1865; do you see car 2,480, 21 casks?

Mr. M. C. CAMERON objected to the form in which the thing was got up.

His LORDSHIP suggested that what Mr. Galt wished might perhaps be done out of Court, and save time.

Mr. GALT.—It will not occupy more than two or three minutes.

Mr. GALT then read the lists of the numbers of the cars which contained the spirits, with the time of shipment and date of removal. The lists were checked as he read, by Mr. Anderson and the opposite counsel. It was :—Car No 2,454, date of shipment, Nov. 2; car 2,480, Feb. 27; car 2,747, 28th Feb.; car 2,490, 28th Feb., date of removal, March 1; car 2,728, 28th Feb., removed March 1; car 2,726, 28th Feb., removal, March 1; car 3,060, 28th Feb., removal, March 1; car 1,920, 28th Feb., removal, March 1; car 271, 28th Feb., moved same date; car 1,244, 28th Feb., moved same day; car 871, 28th Feb., moved March 1; car 3,292, 28th Feb.; 1,805, 4th March, moved on 6th; car 798, 9th March, moved 10th; car 66, 10th March, moved 11th; car 3,239, March 11; car 2,645, 14th March, moved 15th; car 1,709, 14th March, moved 15th; car 2,608, 15th March, moved next day; car 1,745, 16th March, moved 17th; car 773, 20th March, moved 21st; car 1,846, 21st March, moved 22nd; car 3,159, 21st March, moved 22nd; car 282, 23rd March, moved 24th; car 3,393, 24th March, moved 25th; car 2,158, 29th March, moved same date; 3 cars—Nos. 3,283, 2,605 and 813—all April 10, and moved same day; car 810 11th April, moved same date; car 204, 11th April, moved 11th; car 3,152 10th May, moved 10th; car 1818, 10th May, moved 10th; car 1744, 19th May moved 20th; car 2897, 20th May, moved 22nd; car 1018, 22nd May, moved 22nd; car 3038, 23rd May, moved 23rd; car 1221, 24th May, moved same date; car 3198, 25th May, moved same date; car 1799, 27th May, moved 2 days after; car 3294, 29th May, moved 30th; car 2666, 29th May, moved same date; car 3107, 31st May, moved June 1; car 892, June 1, moved on the 2nd; car 1101, June 3, moved on the 5th; car 261, June 10, moved on the 12th; car 1690, June 13, moved 14th; car 1852, June 13, moved next day; car 343, June 21, moved 21st; car 467, 27th June, moved same day; car 1927, 28th June, moved 28th; car 315, 29th June; and cars 2642 and 2832, July 5th.

His LORDSHIP.—That is voucher 52?

Mr. GALT.—Yes. Then there is car 3167, July 8, moved on 10th; car 2953 July 12, moved next day. The first one not checked is car 1851. Would you

look at the book, Mr. Arnold, and find there, delivered, 6 puncheons to J. O. Mussier? Do you know him? No. I do not recollect selling spirits to him. I recollect selling Robertson & Beaty a small lot, about 5 puncheons. I do not recollect selling any to Moran, Bull & Co.

Mr. GALT.—As to these spirits coming consigned to you, do you think that the Grand Trunk would deliver them without an order from you? I do not know.

You see the way-bill (showing him)? Have you any question that that spirit came down to your order consigned to Montreal? Could not say.

Mr. GALT (to Mr. Doutre).—Turn to way-bill No. 7 (he did so, and handed it to witness.) Do you, Mr. Arnold, believe that spirits consigned in that way would be delivered out by the Grand Trunk without your order?

Mr. M. C. CAMERON.—I submit my learned friend has no right to ask that question.

Mr. GALT.—I have a right.

HIS LORDSHIP.—(To Mr. Galt).—I understood you were going to produce receipts from the Grand Trunk.

Mr. GALT.—Mr. Arnold sold the spirits to different persons and gave orders on the Grand Trunk for it, and of course, those people receiving it gave their receipts. Remember we have had Dumbrell proving the moving of the spirits, and Burket its receipt at Point St. Charles. And now I ask Mr. Arnold the question, does he think the Grand Trunk would deliver out the spirits without his order?

HIS LORDSHIP.—Suppose he answered in the negative, is that proof?

Mr. GALT.—I will put the question in another way. Looking at the receipt book, have you (witness), any doubt that these spirits were delivered according to the receipts? I could not say.

Will you swear that car-load did not come down to you? I could not.

Have you any doubt it did come to you? I have a doubt.

Looking at the way-bill have you any doubt that the spirits came down to you? I have a doubt in regard to the delivery of them.

Have you any doubt on your mind that a car-load of spirits came down to your order? That I did not deliver?

Mr. RICHARDS.—I submit my learned friend has no right to show witness the way-bill and ask these questions on it.

Mr. M. C. CAMERON.—If witness's order is in existence, it ought to be produced as evidence.

Mr. GALT.—What I contend is, that these spirits were sent without being entered on the stock book; and then I ask Mr. Arnold have you, looking at the way-bill,—(and it has been proved by the Station Master that the casks of spirits were sent to Montreal, and by Mr. Burket that they were checked out from the cars)—I ask him, have you any doubt that this spirits came across the road.

Mr. RICHARDS.—That is an illegal question. It involves half a dozen others.

Mr. GALT.—We say that Mr. Arnold has been in the habit of doing—as is shown now—an enormous business with the Grand Trunk. We have shown him a way-bill containing a consignment of 21 puncheons of spirits to himself, and then ask if puncheons answering to this description were received in Montreal. (To witness.) Have you any doubt that those spirits came to you, and that you received them? What car-load?

Car 1227, running No. 977. Judging from the others, I would say, I have doubts.

Mr. GALT.—That is not on the same way-bill? If it was consigned to me by this bill, either myself or some one else must have got it.

Mr. GALT.—That applies to 1227; not to the former one which was 1821.

To HIS LORDSHIP.—If I sell goods not in my custody, I give an order for them, and in the ordinary course of business that person might transfer the order.

Mr. GALT.—Looking at the way-bill, have you any doubt that those spirits came over the road?

Mr. RICHARDS.—Is that evidence?

Mr. GALT.—It is.

HIS LORDSHIP.—Witness replies I cannot speak positively, for he never sold to those persons; but in the ordinary course of trade, he says, persons buying might transfer.

Hon. Mr. CAMERON.—Unless the things were delivered to the witness, the only proof of delivery would be the production of the order. Witness knows nothing about particular car-loads, as large quantity of things did come over the road.

HIS LORDSHIP.—He might, possibly, remember it.

Mr. GALT.—Have you any doubt that the spirits came over the road? If I could see who it was delivered to, I could tell whether I sold it or not.

I will tell you by-and-bye, (handing witness a book.) Look at that. Did you sell any spirits to A. Walker? I do not know him.

Do you know Messrs. Middleton & Co.? Yes; they were our agents.

Seeing that car-load has gone to them, have you any doubt that they got it? I have sold them some; could not say as to this car-load.

We have already tested it, and shown that this car-load has not been included in those mentioned before. Have you any doubt with regard to Middleton & Co. receiving theirs? I have delivered whiskey to them.

At this stage, 2 o'clock, P. M., Court took a recess for dinner.

On re-assembling:

HIS LORDSHIP asked.—What are the sections of the Act on which this information is grounded?

Mr. GALT replied, that first it set out the 6th section, which required every Distiller in the Province to take out a license. Then the 34th section, which recites that every Distiller or party licensed to keep such book or books as he may be by law required; the 35th section, which refers to the keeping of the stock book, and the 109th, as to penalties.

PETER ARNOLD'S examination resumed by Mr. ANDERSON.—(Mr. DOUTRE, at Mr. Anderson's request, produced the Grand Trunk way-bill for car load, 1848, dated January, 21.)

(To WITNESS).—You see this way-bill of spirits to W. Reid, did you receive it? I do not know that I received that car load. I received some consigned to Reid.

(M. DOUTRE, on being asked, turned up the receipt and handed it to witness.)

WITNESS.—I could not say I received that, or delivered it to Middleton. It is impossible for me to do it.

Do you know anything about car load 1841? I do not know.

It is receipted for L. Rivet. I do not know him.

HIS LORDSHIP.—What is the date?

M. ANDERSON.—24th January, 26th received at the station. (To witness.) Car 1754: what do you say to that? Cannot say anything about that car load. I have nothing to guide me in the matter at all.

Mr. ANDERSON.—It is consigned to Reid and delivered to Holiday.

HIS LORDSHIP (to witness).—I thought you received all consigned to Holiday?

WITNESS.—A large amount.

To Mr. ANDERSON.—I had a general order for all consigned to Reid.

Mr. ANDERSON.—This was consigned in January, 1865. There might have been some consigned to Reid which I did not get. But I think I got all. I cannot speak of this particular car load, for a great deal was delivered to our customers in Montreal that I did not know anything about.

Here is car 1743, to Middleton, 28th January, Do you know anything about it? No.

Then car 2005, January 30. Do you know anything of it? Cannot speak definitely. All I can say is, that I have delivered whiskey to Villeneuve & Lacaille, whose names are here signed.

HIS LORDSHIP.—How would they get it? If I delivered it to them I would have to give an order for it.

HIS LORDSHIP.—Was that course of dealing adopted often? Yes. It was understood by the Grand Trunk that I was to have this whiskey coming to me.

Mr. ANDERSON.—Way-bill 141, car 1754, date same as last. What have you to say regarding that? Cannot say as to that particular one.

Way-bill 15, car 401, consigned to Reid, January 30. I do not know anything about that more than the other.

Way-bill 16, car 53, same date, consigned to D. Masson? I have sold and delivered whiskey to M. Masson; but could not say as to this car load.

Way-bill 17, car 290, same date. Do you know anything concerning it? It is delivered to V. Hudon. I have sold him whiskey. Could not say as to this load.

Way-bill 18, car 277, consigned to C. Philips? As to this car load, could not say.

Way-bill 26, car 1577, date February 22, consigned to several people?

Have sold puncheons to some of them ; but cannot say anything as to this particular car.

Mr. M. C. CAMERON.—To whom did you sell ? To E. Pommerville. Never sold to Sicotte.

Mr. ANDERSON.—Way-bill 27, car 2443, date February 22, delivered to A. Charlesbois ? I have sold him whiskey.

Way-bill 28, car 1242, date February 23, delivered to Tourville, Gauthier & Co. ? I know nothing more about it than that I sold them whiskey.

Way-bill 29, car 2866, February 24, signed by Villeneuve & Lacaille ? I do not recollect anything particular about it. Have sold them whiskey. This, I see, is delivered to P. Arnold, and there is no doubt about my getting it. My signature as to the delivery is on the way-bill.

Mr. M. C. CAMERON.—You have given a receipt for what they also appear to have receipted ? I do not know how it is.

His LORDSHIP.—Do you receipt a balance, or the whole of it ? I should say I got the whole car.

Mr. M. C. CAMERON.—Well, then, the others have signed something else in reference to that car. I signed it as the receiver.

Mr. M. C. CAMERON.—We had it stated that it was delivered to Villeneuve & Lacaille ? I do not know who I delivered it to.

Where is their receipt ? It is here : put in, I should say, by one of the clerks, for the delivery to Villeneuve & Lacaille.

Mr. ANDERSON.—Way-bill 30, car 1001, February 27, signed V. Hudon ? I do not know anything about it.

Way-bill 31, car 1287, signed by John McDonald ? Know nothing about it. It is dated February 27.

Way-bill 76, car 3362, date April 17 ? Signed by one of Holiday & Bros' men.

Way-bill 77, car 2952, put in Holiday's store again, date April 17 ? Do not know anything about it specially.

Way-bill 78, car 3157 ? I say the same of it.

Way-bill 79, car 3392, date same as last ? I say the same of it.

Way-bill 80, car 1139 ? I say the same of it ?

Way-bill 81, car 1850, date April 18, signed by James Holiday ? I know as little about that as the last.

Way-bill 82, car 835, same date ? I say the same to it.

Way-bill 83, car 1653, date April 19 ? I say the same to it.

Way-bill 84, car 2954, 20th April. It is signed L. Chaput, Fils & Co. ? I know nothing about it more than we were in the habit of sending them whiskey.

Way-bill 85, car 2673, date April 21. Way-bill 88, signed by D. Masson & Co., and consigned to Borst, Halladay & Co., car 3263, date April 25. Do you know what became of any spirits consigned to Borst, Halladay & Co., in Montreal ? No.

Way-bill 93, car 1262. It is put down as having been delivered to A. McGibbon ? I do not know that I gave the direct order, but know that they have got some from us.

Way-bill 91, car 2828, date May 3, Tourville, Gauthier & Co. Do not know anything particular about it except that we have sold them spirits at times.

Way-bill 98, car 2627, delivered to Cuvillier & Co., date May 12? I say the same regarding it as the last.

Way-bill 99, car 469, date May 15, to A. Cusson? I think I have sold him only one barrel of whiskey. There is only one barrel marked down.

Mr. GALT said that the witness might retire for the present. He would recall him for the cross-examination of his learned friends.

THOMAS TIFFIN, of Montreal, examined by Mr. GALT.—Did you ever purchase any spirits from Borst, Halladay & Co.? Yes. (Invoices produced.)

Mr. GALT read the invoices.—The first is: Montreal, May 13, 1865, for 603 gallons, 50 o. p., receipted Borst, Halliday & Co., per Arnold; equal to 904½ gallons. The next is dated May 15, 1865, for 2,485 gallons, 50 o. p., equal to 3,727 gallons. The next is dated May 26, for 2,502 gallons, 50 o. p., equal to 3,753 gallons, proof. Then the 24th June, 4,981 gallons, 50 o. p., equal to 7,471 gallons. Then June 24, 4,968 gallons, o. p., equal to 7,452 gallons. June 28, 2,666 gallons, 50 o. p., equal to 3,999 gallons. July 16, 55 barrels, or 2,245 gallons, 50 o. p., equal to 3,367 gallons.

HIS LORDSHIP.—The total is 30,674 gallons.

Mr. M. C. CAMERON.—You bought this liquor from Arnold, all in Montreal? Yes.

Do you know where it came from? I do not.

Did you test it? No.

Mr. GALT.—You bought it for 50 o. p.? Yes; and heard no complaints of it among our customers.

Mr. M. C. CAMERON.—Do the invoices express that it is 50 o. p.? All except one.

Mr. MIDDLETON, examined by Mr. GALT.—You reside in Montreal? Yes; and am member of the firm of Laidlaw & Middleton.

Did you act as brokers or agents for Borst, Halladay & Co., in selling spirits? Yes.

What quantity of spirits was sent to your firm, to be disposed of by you, between September 1, 1864, and July 1, 1865? The quantity passing through our hands was 325 puncheons high wines; and they were sent by them for delivery, or sold for them.

What was the strength of that spirit? It was supposed to be 50 o. p.

HIS LORDSHIP.—Was it sold as that? Yes.

Mr. GALT.—What was the average gauge of the puncheons? 115 gallons to the puncheon. We passed through our hands 37,305 gallons, 50 o. p., equal to 56,062 proof gallons.

(A document, specifying the quantities and dates mentioned, was handed in by witness, and marked "L.")

Mr. GALT.—One McLaren bought spirits from you, did he not? Yes; 5 puncheons on the 20th December, 1864; 5 on the 1st February, and 11 on the 28th February.

Well, that we will deduct. There are also several others,

Did you sell any to McGibbon; how much; and when? On the 25th February we sold him 21 puncheons; on the 4th May, 21 puncheons.

Did you sell any to Neil Shannon? Yes; 21 puncheons, February 28. Mr. M. C. CAMERON.—Do you mean to say that these quantities mentioned were received by you between the 1st September, 1864, and the 1st July, 1865? Yes; we had nothing before that, except one time when Borst was sick, and we did some business for him, of which no memorandum was kept.

What is the date of the first transaction. It appears to be Dec. 13, 1 puncheon? We had it in store. It came from Holiday & Bros., and probably the greater part of the liquor came from James Holiday's warehouse.

Can you say the whole of it did not come from there? No.

Do I understand you to mean that it all may have come from Holiday & Bros.? No; part of it came direct from Maitland.

Do you know at what date? I do not.

Was it to supply any particular sale? Yes; to Smith & Cox, I think.

I see three deliveries in your memorandum to Smith & Cox, of a car load each? Yes; we simply delivered the whiskey.

I see Mr. Chaput got some from you: a barrel of gin? We simply made the delivery of them.

Here is Mr. Chaput, 8 puncheons, again, and Lacaille, also, 5 puncheons, and you seem to have sent Borst, Halladay & Co. 6 puncheons? We delivered them to their order.

Mr. GALT wished a word in explanation. The quantities, he said, of which I am giving evidence, I do not assert were all distinct lots. What I do assert is that 2,272 puncheons of spirits came over the Grand Trunk. These spirits, spoken of by the witnesses, when put together, would amount to a larger quantity. What I want to show is, as I have stated, that in Montreal alone there was disposed of an amount equal to that said to have been brought over the Grand Trunk. I do not want to charge them twice over with the sale of the same thing.

E. POSTON, of Poston & Co., Quebec, examined by Mr. GALT.—Did you purchase spirits from Borst, Halladay & Co. direct, or Arnold, as their agent? Yes.

What was the quantity? and when did you buy it? We bought from Arnold, by my junior partner. (Invoices produced.)

Mr. GALT.—This one is dated May 6, 1865, and is for 42 puncheons, 5,033 gals, 50 o. p., equal to 7,549 gals. Also, on 17th May, 35 barrels, equal to 1,712 gals., 50 o. p., and 10 puncheons, equal to 1,212 gals., or a total of 2,934 gals., 50 o. p., equal to 4,386 gals proof spirits.

Did you test them yourself? No; my storeman tested a few of them. We were not in the habit of testing anything we got from Borst, Halladay & Co. Have no doubt it was 50 o. p.

Mr. M. C. CAMERON.—You say these were purchased by your junior partner? Yes.

Were you present at the time of purchase? I was in the office, where it was mooted to me. I recollect the transaction. It was with Arnold.

Do you know where it came from? I could not swear, but understood from Arnold that it came from Maitland. I did not know there was a storehouse in the city.

Were these invoices delivered to you at the time the arrangement was made? Invoices came with the articles to me.

Only one of these mentions o. p.? I am aware of that.

Were you present at both bargains? Yes; and although the spirit is not stated to be o. p., I bought and sold it as such.

Are you quite sure the invoices came with the spirit? I would not like to swear positively, but believe they did, as they always had done.

I see the invoices marked in bond? The spirit was bought to go in bond, and we placed it in bond.

The invoices say it is already in bond? Coming down it is in bond. We can have it sent to us in bond.

It is in bond till the duties are paid. You had to pay the duty, and did so? Yes; I paid 45c. per gal. duty.

I thought we were being charged with these as not having paid duty. Here we find it goes in bond.

HIS LORDSHIP.—Mr. Galt says he gets this witness to corroborate the statement that so many car-loads went from Maitland distillery.

MR. GALT.—Certainly.

NEIL SHANNON examined by Mr. GALT.—I purchased spirits from Arnold and from Middleton, Laidlaw & Co.

What did you buy from Arnold? 21 puncheons, on January 4, 1865, equal to 2,477 gals.

What was the strength? It was sold at 50 o. p.

Your purchases equalled 111,63 proof gallons? Yes. On July 8, 1865, bought, through Arnold, 42 puncheons, containing 4,942 gals, 50 o. p., equal to 7,413 proof gals.

MR. M. C. CAMERON.—You bought in Montreal, you say; where did you get it? In Montreal, delivered to me.

Do you know where it came from? I could not say. Part of it came by Grand Trunk carters from the Grand Trunk Railroad. These last two loads came by Grand Trunk carters.

Did you get orders from Arnold to get them? No; they were sent to me by Arnold, who called at my place, took the guager to gauge it. I go the certificate, and it was delivered to me.

Do you know whether or not the Grand Trunk Co. store whiskey? I think they always deliver goods on their arrival. I think the liquor would probably have been tested in the Grand Trunk sheds.

Do the Grand Trunk carters do no business but for the Grand Trunk? I never gave them anything to do only for the Grand Trunk.

Who are the Grand Trunk carters? Shedden & Co.

They are carters who work for the Grand Trunk specially, and the Grand Trunk give them all their business? Yes; I do not know that they do anything for the city. Think they work for the Grand Trunk alone. I do not know that they take goods from the merchants, from store to store; but never asked them.

W. D. McLAREN examined by Mr. GALT.—Did you purchase any spirits from Laidlaw & Middleton, or Borst, Halladay & Co., or from Arnold? You need not show us any from Laidlaw, Middleton & Co.: only show us any you bought from Borst, Halladay & Co., or from Arnold. (Invoice produced.)

Mr. GALT (reading the invoice).—This one is dated 26th April, 1865, for 11 puncheons, 1,273 gals., 50 o. p., equal to 2,009 gals. proof. It has McCarthy's certificate.

Mr. M. C. CAMERON.—That total cannot be.

Mr. GALT.—You are right; it makes 1,909 gals.

Mr. M. C. CAMERON.—Where did you get the 1,273 gals. from? They were brought to my door by Grand Trunk carters.

All yours came in that way? This lot is the only lot direct from Borst, Halladay & Co. All the rest were purchased through Middleton.

When you bought from him, how did it come? City carters brought it generally.

Can you specify any particular quantity? Yes; on Feb. 1, 5 puncheons, and some that I delivered myself.

Any others? Yes, on the 20th December, I recollect one being delivered by some of the city carters.

Do you recollect the time of day? No.

Was it morning or evening? Cannot say.

Was there any person there but yourself to receive it? I generally received it. I got the order for the whiskey and sent it down by my clerk to the store where it was stored. They would not send it unless I sent carters for it. The second time my clerk went down he did not get it till carters were sent, and he enquired the reason. I told him.

Did you ever send carts anywhere else to get your goods? Yes. Sometimes we order merchants not to send. I have a waggon of my own and send it sometimes. At other times I hire a carter.

J. P. ADAMS, examined by Mr. GALT.—Where do you reside? In Montreal.

Have you purchased spirits from Borst, Halladay & Co., direct or through Arnold? Through Arnold. Here are the invoices.

Mr. GALT (reading them).—The first is December 28, 1864, 14 puncheons, 1691 gallons, 50 o. p., equal to 2536 gallons. The next, January 5, 1865, 5 puncheons, 548 gallons, 50 o. p., equal 822 gallons. June 17, 1865, 9 puncheons, containing 1051 gallons, 50 o. p., equal to 1576 gallons.

Mr. M. C. CAMERON.—You got that in Montreal? Yes. I purchased from Arnold. It was delivered at my store.

Do you know where it came from? I do not know exactly. Believe it came from the Grand Trunk carters, who always deliver free of charge.

Was it not your bargain to get it free of cartage? No.

If you had got it from Middleton, or Holiday, getting it through Arnold, would you have paid cartage? No; but I am certain it came by the Grand Trunk. On every occasion when they came with full loads they took back empty puncheons.

I see in your memorandum, on December 28, 25 puncheons are marked \$100. How is that? That is for returned puncheons.

HIS LORDSHIP—By the custom of the trade you return puncheons? Yes.

Mr. M. C. CAMERON—Do the invoices come with the goods? If you look at the date of the purchase and receipt, you will find them pretty nearly the same date. Arnold generally got the money himself, and delivered the puncheons to the carters when they came. If Arnold called on a certain day and sold high wines, he sent it, and the carters returned with all the empty puncheons on hand, and when Arnold came I was credited with the number of empty puncheons.

What arrangement could have been made with any other carters? I would have had to pay any other carters. The Grand Trunk carters do not charge.

Is there anything to show whether or not you did pay the return cartage? I swear I did not pay anything. I recollect it positively. My business is large. I employ 4 clerks, and will swear to my invoices.

Do you not send barrels back when you buy from anybody? No. We buy other imported liquors in Montreal.

If you got your liquor from the Distillery, and the barrels went back, they would not go by the Grand Trunk carters, would they? No. Molson & Dow keep their own teams.

If you bought liquor in puncheons and did not buy the puncheons, did they not go back to the person from whom you bought? All merchants send their carters for the puncheons? You are wrong. All merchants do not.

Did you ever buy liquors from others? I did.

Did you ever return the barrels? Sometimes I sent my own teams back.

To whom did you do that? Whoever I bought it from. I bought one lot from Fitzpatrick & Moore, and sent the puncheons to Dow's by my man. I did it then to oblige him. We try to oblige our customers often by sending for puncheons. But those I spoke first of went by the Grand Trunk. I know they did, and saw them loaded.

W. F. LEWIS, examined by Mr. HARRISON.—Are you member of the firm of W. F. Lewis & Co., Montreal? I am.

Between September, 1864, and July, 1865, have you had any dealings with Borst, Halladay & Co.? Yes. (Invoices produced.)

Mention the first? It was on March 9th, 1865, 55 barrels, 33 u. p., 2681, gallons, equal to 1796 proof gallons; April 26, 10 puncheons, 50 o. p., 1193, 50 o. p., equal to 1789 proof gallons; 25th May, 54 barrels, 2633 gallons, u. p., equal to 1764 proof. Then 10 puncheons, 1212 gallons, equal to 1818 proof. June 14, 10 puncheons, 1178 gallons, 50 o. p., equal 1767 gallons. Same date, 35 barrels, 1712 gallons, u. p., equal 1147 gallons.

HIS LORDSHIP.—I make the total 10,081 gallons.

WITNESS.—I have another, dated Maitland, July 6, 1865, 10 puncheons, 50 o. p., 1180 gallons, and 35 barrells whiskey, about 33 u. p., 1704 gallons, or reduced, making 1136 gallons.

MR. M. C. CAMERON.—All this you bought at Montreal? The first was generally ordered by one of the partners; but the latter by telegraph. Some of it was bought from Arnold. Could not tell which. We ordered from him on one or two occasions.

Where was it tested? In Montreal, generally.

Who tested it? Generally, McCarthy.

How was the quality ascertained? By guaging.

Did the barrels turn out to contain the quantity invoiced? As a general thing they would not hold what they gauge; but very little less. The puncheons are generally averaged 118, but never hold out what they are gauged: there would probably be one or two gallons deficiency.

A. MASSON, examined by MR. HARRISON.—Are you member of the firm of D. Masson & Co., merchants, in Montreal? Yes.

Have you had any transactions with Borst, Halladay & Co. since September, 1864? Yes.

Mention them, beginning at the first. On the 1st December, 1864, we bought 16 puncheons, 1929 gallons, 50 o. p., equal to 2893 proof gallons. On February 1, 1865, 42 puncheons, 4881 gallons, 50 o. p., equal to 7321 gallons. On March 20, 42 puncheons, 4982 gallons, 50 o. p., equal 7473 proof. May 1, 25 barrels, 1239 gallons rye, u. p. 22 to 25, equal to 929 gallons. June 19, 55 barrels, 2627 gallons, also rye, u. p., making 1970 proof gallons. Total, 20,586 gallons.

MR. M. C. CAMERON.—Did you buy in Montreal? We did.

From Arnold? Mostly through a broker; but we were immediately placed in connection with Arnold. We bought through A. Charlesbois & Co.

Did you test it? It was generally tested in the office by ourselves.

You did not take McCarthy's test? McCarthy generally tested for Arnold. We for ourselves.

Do you recollect testing these in particular? No; we did not care so much for the guaging as the strength.

SIMON HAMLIN examined by MR. HARRISON.—Were you in the employ of Victor Hudon, in November, 1864? Yes; and continued with him up to May, 1865.

While you were in his employ, had he any transactions with Borst, Halladay & Co. after Sept. 1, 1864? Yes.

Mention the first. It was Nov. 4, 21 puncheons, 2,464 gallons, 50 o. p., equal to 3,696 gallons. The next is Dec. 9, 21 puncheons, 2,479 gallons, 50 o. p., equal to 3,718½ gallons. January, 1865, 21 puncheons, 2,497 gallons, 50 o. p., equal to 3,745½ gallons. Feb. 1, 42 puncheons, 4,906 gallons, 50 o. p., making 7,359 gallons. Feb. 20, 21 puncheons, 2,463 gallons, 50 o. p., equal to 3,679½ gallons. March 30, 121 puncheons, 14,541 gallons, 50 o. p., equal to

21,811 $\frac{1}{2}$ gallons. May 30, 11 puncheons, 1,316 gallons, 50 o. p., 1,974 gallons

HIS LORDSHIP.—You left then?

WITNESS.—I was still in the house and paid for them myself. June 13, 102 puncheons, 1 barrel, equal to 12,078 gallons, 50 o. p., or 18,117 gallons proof. The next, August 5, was spirits stored in Montreal, I think. It was 62 puncheons, 7,221 gallons, 50 o. p., equal to 10,831 $\frac{1}{2}$ gallons proof.

Had you invoices for all these? Yes.

Produce them all. Witness did so.

HIS LORDSHIP.—The total number of gallons amounts to 74,932 $\frac{1}{2}$ gallons.

MR. M. C. CAMERON.—From whom were these bought? For the most part from Arnold.

Was it all bought in the city of Montreal? Yes; some may have been bought by correspondence, but cannot specify which lots.

Was it all bought on the same terms? With the exception of 62 puncheons. Of these I have no personal knowledge. I produce an invoice for this quantity; but was not with Hudon when the purchase was made. I heard of the purchase having been made. Heard it from Hudon himself or his employees.

Why did you enquire about the 62 puncheons? Because I found the invoice.

How did you come to be looking after them? I looked for all the invoices made by S. S. Halladay.

What is become of Hudon himself? He is gone to Europe. I went to his establishment and found these.

Do you recognize these from the writing? Yes; it is Arnold's writing. One of the invoices is receipted by Borst himself.

Did you deal with Borst at all? I did not myself.

Did Hudon? Yes; I am aware from my own knowledge that on one or more occasions Borst sold to Hudon. I recollect Borst being there on some occasions about selling liquor. He might have been there eight or ten times. Cannot say when.

Had you been dealing with Borst & Halladay for a long time? Since January, 1864.

I see that with two exceptions all the invoices are dated in Montreal? All ought to be receipted in Montreal.

And you think all the transactions took place at Montreal, though some may be dated Maitland? Some may have taken place by correspondence.

Did you ever return them any spirit you got? Yes; cannot tell the quantity. Think it was replaced by a similar quantity. It could not have been a larger quantity.

Where did you send it? To a store in Montreal. I heard they had rented Holiday's store.

Did you test the strength? I did not; most of them had been tested by McCarthy.

How did you get evidence of that? He used to send us returns, which are usually affixed to the invoices.

Would you undertake to swear that those that had not his certificate were really tested by him? I could not. I bought and sold it for 50 o. p.

CHARLES LACAILLE, of Villeneuve & Lacaille, examined by Mr. GALT.—Has your firm had any transactions with Borst, Halliday & Co. since Sept. 1864? Yes; on Dec. 20, 1864, we bought 21 puncheons, containing 2,447 gallons, 50 o. p., equal to 3,670 gallons. Feb. 1, 1865, 21 puncheons, 2,480 gallons, 50 o. p., equal to 3,720 gallons. Feb. 25, 21 puncheons, 2,457 gallons, 50 o. p., equal to 3,685 gallons. June 8, 10 puncheons, 1,181 gallons, 50 o. p., equal to 1,771 gallons, and 35 barrels; same day, 1,693 gallons. Total, 2,539 gallons.

HIS LORDSHIP.—I make the total number of proof gallons spoken of by witness 15,385.

Mr. M. C. CAMERON.—(To witness)—Where were these bought? In Montreal, except the last one, June 8, which we got by lots.

Did you buy from Arnold? Can't tell.

Who bought it? My partner. We got a car load from Middleton, 25th Feb., through a broker. I had no personal knowledge of the transactions at all; my partner bought all the whiskey himself.

JOHN HATCHET, examined by Mr. GALT.—Are you in the employ of Fitzpatrick & Moore? Yes.

Are you aware whether they purchased spirits from Borst, Halladay & Co.? Yes; (invoices produced.)

Mr. GALT.—This one is dated Nov. 23, 1864, 21 puncheons, 50 o. p., 2,489 gallons, equal to 3,733 gallons proof. It is receipted by Borst. Next is 6th Decembr, bought through Middleton, 15 barrels old rye, 717 gallons, 25 u. p. or 538 gallons. December 21, 2,443 gallons, equal to 3665.

WITNESS.—I believe the handwriting there is Borst's.

Mr. GALT.—The next is March 11, 21 puncheons, 2,505 gallons, 50 o. p., equal to 3,757 gallons. It is receipted Borst, Halladay & Co., per Arnold. The next is May 25th, 42 puncheons, 5,000 gallons, 50 o. p., 7,500 gallons proof, and 482 gallons old rye, 25 u. p., equal 362 proof.

HIS LORDSHIP.—The grand total is 19,555 gals.

WITNESS (to Mr. M. C. Cameron).—I know the spirits were purchased from seeing the invoices. I understand McCarthy tested them.

G. LE BLANC, of Montreal, examined by Mr. GALT.—Did you purchase spirits from Borst, Halladay & Co.? I did.

Have you the invoices? Yes. The first is dated Dec. 28, 1864, for 21 puncheons, 2,495 gals., 50 o. p., equal to 3,742 gals. The second is dated 24th March, 1865, 21 puncheons, 2,532 gals., 50 o. p., equal to 3,798 gals. The 17th June, 1865, 21 puncheons, 2,491 gals., 50 o. p., equal to 3,736 gals. proof.

HIS LORDSHIP.—The total is 11,276 gals.

Mr. M. C. CAMERON (to Witness).—Were these purchased in Montreal from Arnold? Yes.

Did you test them? No; I bought it at the rate specified.

A. COUSSON examined by Mr. GALT.—Did you purchase any spirits from Borst, Halladay & Co.? Yes.

Are these the invoices I show you? Yes.

Mr. GALT.—The first is dated May 17, 1865, 21 puncheons, 2,490 gals., 50 o. p., equal to 3,735 gals. Next, May 18, 1865, 2 puncheons, containing 237 gals., 50 o. p., equal to 355 gals. proof.

HIS LORDSHIP.—The total is 4,090 gals.

Mr. M. C. CAMERON (to witness).—Were these bought in Montreal? Yes; through a broker, Charlesbois.

Did you pay to the broker? No; to Arnold.

M. CHARLESBOIS examined by Mr. HARRISON.—Have you made any purchases from Borst, Halladay & Co. since Sept., 1864? Yes; on Feb. 24, 1865, 2,479 gals., 51 o. p. in the bill, but I paid for it as 50 o. p. June 14, 1865, 21 puncheons, 2,471 gals., 50 o. p. (Invoices put in.)

Mr. M. C. CAMERON.—Was that bought in Montreal? Yes.

HIS LORDSHIP.—From whom? The first lot was from a broker. I paid it to Arnold.

At this stage, 6 o'clock, p.m., the Court adjourned till the following day.

THIRD DAY'S PROCEEDINGS.

(Before Hon. Justice John Wilson.)

WEDNESDAY, Jan. 10, 1865.

Court assembled again at 10 o'clock, a.m.

The first witness called was JOSEPH PHELAN, who was examined by Mr. ANDERSON.—You are a merchant, carrying on business in Montreal? Yes.

Between Sept., 1864, and July, 1865, had you any transactions with Borst, Halladay & Co.? Yes; on Nov. 21, 1864, I purchased 21 puncheons, 2,508 gals., 50 o. p., equal to 3,762 proof gals. On the 23rd, same month, 1 car-load, 2,489 gals., 50 o.p., equal to 3,733 gals. These two lots were bought by correspondence.

HIS LORDSHIP.—At Maitland? Yes.

Mr. CROMBIE.—Did you test these yourself? No; I merely bought them as such.

Do these puncheons always hold what they are gauged at? No; I had on one lot of puncheons 12 gals. less.

What would be the difference? From 2 to 5 gallons.

JOHN FRASER examined by Mr. GALT.—Where do reside? At Quebec; am a cooper.

Were you in the habit of gauging and testing spirits? I gauge most of those coming to the city; but very seldom for strength. Did not try the strength of those marked as coming from Borst, Halladay & Co.

Mr. RICHARDS.—Have you known puncheons to be much less than what they gauge? I never tried them, except with the rod.

Have you ever gauged out a puncheon? One; it was a false puncheon.

Mr. DUNHAM JONES examined by Mr. GALT.—You are the Collector of Customs at Port Maitland? Yes.

Have you got the returns at the Port with regard to grain imported for Borst, Halladay & Co.? Yes. This is the book.

What was the amount of grain imported for Borst, Halladay & Co., between Sept., 1864, and July 1, 1865? Have you made out a statement of it? Yes; here it is.

Did you make the entries yourself? No; but I was present when the grain came in.

To. Mr. GALT.—Under date Oct. 24, I find 6,000 bushels of rye, that came by the "Morning Star," equal to 336,000 lbs.

Mr. RICHARDS.—What book have you got?

WITNESS.—It is the book of the Port.

HIS LORDSHIP.—Suppose a complaint were made that the cargo did not agree with the manifest, would it be rectified? Yes.

Mr. GALT.—What is the next entry in the book? 13,005 bushels of corn, from Chicago, for Borst, Halladay & Co., per the schooner "Tecumseh," of Goderich, 728,280 lbs. The schooner "Flying Cloud" entered, Nov. 15, 3,500 bushels Indian corn, weight 196,000 lbs. On Dec. 11, by barque "British Lion," 15,337 bushels corn, weight 858,872 lbs., for Borst, Halladay & Co.

Manifest 16, Dec. 1, what do you find there? 18,436 bushels corn, by the schooner "Prince Alfred," weight 1,032,416 lbs., for Borst, Halladay & Co.

In manifest 17, Dec. 5, what do you find? 17,985 bushels of corn, by the schooner "John Bredin," 1,007,260 lbs.

Manifest 18? On Dec. 9, 16,769 bushels corn, weight 939,164, per schooner "Eli Bates."

Manifest 19? May 29, schooner "Bahama," 11,200 bushels corn, weighing 627,200 lbs. It was imported from Chicago.

Mr. GALT explained that this was the entry made by the parties themselves, and sworn to by Chisholm.

WITNESS.—All these documents were presented to me, instead of the manifests, and were signed in my presence.

Mr. GALT.—What do you find entered under date July 4 and 5, from the schooner "Shook?" 6,045 bushels corn on the 4th, and 11,490 on the 5th.

Were these entries (handing another document to witness) tendered as the quantity brought by the schooner "Shook," and say whether you accepted or refused them? I refused them.

Mr. GALT.—Here is a case in which they claim to enter at 15,672 bushels, in places of 17,535 bushels. (To witness.) Do you recollect the circumstances? I do. About that time I heard they intended to have taken part of the cargo to Ogdensburgh. They unloaded first 6,045 bushels. When that much was done, the mate of the vessel got drunk, and could not tell whether the measurement was right or wrong. Next morning (the 5th) Halladay & Co. concluded to have it all discharged, and then I asked for the manifest.

Mr. GALT.—In the first place, I produce a manifest of the cargo laden on board

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the schooner "Shook," showing two lots—one 6,000 bushels, and the other 11,535 bushels—to show the original intention to land the 6,000 bushels at Maitland, and send the other lot, 11,535, to Ogdensburgh. (To witness.) With regard to railroad manifests, look at the entries in your book from March 1 to March 10, 1865; how much corn do you find? Here is an entry, dated Port of Brockville, of an importation per the Grand Trunk from Detroit, of 1,507 bushels corn, amounting to 84,392 lbs. It is sworn to at Maitland, 22nd March, and signed by Chisholm, who transacted business for Borst, Halladay & Co. Here is another, 17th April, 1,442 bushels corn, Port of Brockville, for Borst, Halladay & Co., weight 80,752 lbs.

Look at entry, 5th April, 1865? I find 2,000 bushels barley.

And here is the manifest of the scow "Monitor," of Kingston, 2,000 bushels barley, consigned to Borst, Halladay & Co., date 5th April, 1865; weight, 96,000 lbs. (To witness.) Refer to April 24. (Witness does so, and checked, as in the other instances, the copy in Mr. Galt's hands, with his [witness'] books.)

MR. GALT.—It is the manifest of the cargo laden on board the barque "St. Lawrence," Alfred, master, 20,217 bushels of corn; date Nov. 21, and makes 1,132,152 lbs.

WITNESS.—Cargo was entered April 24.

MR. GALT.—Look at the entry April 27. I find entered 4,037 bushels of rye.

MR. GALT.—Here is the manifest. It was 226,072 lbs., brought by the "Morning Star" from Belleville. (To witness.) Now refer to entries in April and May of manifests of 41 car-loads, brought by the Grand Trunk? I have no manifests, but have entry or 41 car-loads, containing 15,099 bushels of corn, in both March and April, amounting to 845,544 lbs.

Was this entry (showing him) ever tendered to you? Yes. It was an onward entry, and was tendered to me for 41 cars of corn. (The document read: "Port of Brockville, Maitland. Imported for First National Bank, Detroit, per Grand Trunk, 41 cars of corn." Document put in and marked "N.")

Do you recollect any circumstances connected with the matter? On May 31, a Mr. Truman Smith, accompanied by Halladay, came into my office and tendered me an entry. I think this is the one. I directly asked Mr. Halladay where was the manifest. He replied, there was none. He said this corn had gone to Ogdensburgh. I believe he wanted to get it entered at Maitland, so that the books could be settled at Port Sarnia. The same day I went to the Station Master of the Grand Trunk, and asked him about the matter. He—

MR. RICHARDS.—I object to your giving any such statement.

MR. GALT.—Did Halladay admit to you that those 41 car-loads had gone to the distillery? He did. I went, same day, to the Station Master to know what became of the corn, which, it was stated, had gone to Ogdensburgh. He said it had gone to Ogdensburgh, and gave me an outward report.

Is this the report (handing him a document)? Yes.

(The document was read, and stated that these 15,099 bushels of corn were consigned to Ogdensburgh, and belonged to Smith & Dyce.)

WITNESS.—I was not satisfied. I was sure the corn had not gone to Ogdensburgh, and I wrote to Striker, Collector of Customs at Prescott, to send me word if it had gone. He said it had not. Then I got a letter from Port Sarnia, blaming me for not sending the manifests back receipted. I asked Bowker where the manifests were; and first he replied that he did not know. I questioned him considerably, and he finally acknowledged sending them by Halladay's teamsters. After I had discovered that the corn must have come to Maitland, Halladay called on me and said: I wish you would write for a duplicate of those manifests of the 41 cars, so that it could be arranged; for the cars came here, and never went away. I did not write for the duplicates to Sarnia, but they came down.

MR. GALT.—Did you ever see what purported to be duplicates of the manifests?

HIS LORDSHIP (to witness).—Let the jury understand how it was that the Collector at Sarnia had interest in looking after the 41 cars.

WITNESS.—He could not close his books without them. The manifests of the corn were sealed and directed to me; and if the corn was exported, it was my duty to return the manifests to the Collector at Sarnia, receipted and signed. But I never received them.

TO HIS LORDSHIP.—The corn was bonded from Sarnia for export.

MR. GALT.—Did Halladay ever speak to you about your having called the attention of the Collector of Inland Revenue to the quantity of corn going into the distillery? Yes; I do not know the date, but remember it perfectly well. It was in 1864 first; then 1865.

Tell us what Halladay said in 1865.

HIS LORDSHIP.—What time in the year? I do not know.

MR. GALT.—I will call another witness to prove that exactly. (To witness.) Tell the whole story.

WITNESS.—Along in May or June, 1864, I said to Mr. Wilson, Inland Revenue Inspector, do you know how much corn I have in my books? and he said, No. I then said I had 129,000 bushels of corn for the distillery. A day or two afterwards, Halladay came into my office, and was annoyed at my telling Wilson how much corn had come in. He wanted to know if I wished to injure him. He said a good deal to me, and appeared to be very much annoyed. He said I was bringing the corn under the notice of the Government. One day, at the close of 1864, Wilson turned around from his desk, when he had closed up the year's accounts, and said, How much duty has Halladay paid for the year? I replied, \$40,000 or \$50,000. He said it was more, about \$70,000. I thought that tallied well with my books. After that, again, Halladay said a great deal to me in my office. He used to come into my office, and say I wished to injure him, in consequence of stating these things about him.

MR. GALT.—If you can remember it, please tell what was said.

WITNESS.—It was in reference to my telling Wilson how much corn there was. Halladay came in in a violent way to the office, saying, Do you wish to

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injure me by telling Wilson about the corn? Sometimes he would state to me that he was determined to sell all the tubs out of the place—that it was too small for him.

Mr. GALT.—Mr. Jones, cannot you come to the point? Cannot you tell us about Halladay's abusing you? I can. It was this summer.

Mr. GALT.—What took place between you and Halladay after you wanted the return of corn from Bowker?

Mr. RICHARDS.—When was this? In June last. Halladay came into my office. I was unwell. It was in June, I am pretty sure. Halladay came in smiling, first, [Laughter] but directly demanded what I meant by interfering with his business—saying that I had demanded a statement from the Grand Trunk. He got violent and accused me of interfering with his business, and said I should not do so. I answered, I would not be interfered with in the Customs Department. If I had done anything wrong, he might report me to Quebec. He then got very wrathful, jumped up, and said, "By the Holy Jesus! I will smash you!" "By the Holy Jesus! I will ruin you."

Mr. RICHARDS.—Oh!

Mr. GALT.—In this case it is of great importance the jury should hear the language made use of to the Collector of Customs in the discharge of his duty.

HIS LORDSHIP.—He may have treated Jones roughly or improperly. Are we trying that?

Mr. GALT.—It is a circumstance of the greatest possible consequence to show the conduct of Halladay in the case. In the discharge of his duty he made certain enquiries; and if there were anything objectionable in that course, Halladay ought not to have made use of the language.

HIS LORDSHIP.—Granted. But let us not hear all that violent swearing.

WITNESS.—Halladay jumped up in a violent rage, said he had more influence than I had, and that he would ruin me and smash me, and used similar language. He was very violent; and at last I went to my inner office, and he went away.

Mr. RICHARDS.—Who is your assistant? The landing-waiter. I attend to outside business myself. There was no duty on grain during the time the entries spoken of were made.

So that, as far as your office was concerned, the quantity of the cargo—whether it was 6,000 or 9,000 bushels—did not matter? No.

So far as your office was concerned, they had no interest to be particular about the entry, whether it were correct or not? None.

Do the manifests show the cargoes in pounds? No; all in bushels of 56 pounds to the bushel.

You made the calculation in pounds since you were subpoenaed as a witness? Yes; I did it this morning.

Do you recollect the cargo that came by the schooner "St. Lawrence"? Yes.

Was that cargo damaged? It was, badly. I went on board the vessel two or three times, and took specimens of it to show to Brunel when he came.

Do you recollect the cargo by the "Eli Bates" being in a damaged condi-

tion? No. I recollect buying about 90 bushels damaged corn from them last year.

Do you know whether Smith & Dyce had grain at Halladay's mill? I do not know.

Who were they? They fed cattle at the distillery they are from the States. What number? They only had two stables.

Who else had cattle there? Mr. Morse and others. There were about 1,000 beef cattle there altogether, and 400 or 500 hogs were being fattened there.

Did you know of Smith & Dyce receiving grain there? Last winter Halladay said he had a quantity of oats stored there, which had to be shipped to Ogdensburg for Smith & Dyce, and one of them came into my office and told me I might have a couple of hundred bushels of their oats.

Do you know of their having corn there? No.

Did the distillery break down from time to time? Occasionally.

With regard to the 41 cars coming by the Grand Trunk, they came at different times? Yes; 8 cars came in during the winter. That was the first I knew about the cars. Cars were coming in constantly; but could not say to whom.

To whom did the 8 cars come? To Smith & Dyce. Smith tendered entry.

When Halladay asked for the manifest, did he tell you the corn had not left Maitland? No. He said the corn came here and has not gone away.

Did you ever weigh any of this corn yourself? No; I took the quantity from the manifest, from the inward report of the captain, and every way.

I believe Halladay and yourself were very good friends up to this time? Yes; I sold him a good deal of stuff. He always paid me, and I am not very angry now.

Did you think it unreasonable of Halladay to get angry, then? Yes; he is a large man, and I am 73 years old.

I agree with you; and if he had tried to strike you? I would have tried to thrash him if I could.

You are aware his property is under seizure since July last—some six or eight months? Yes; he is a very large distiller, and paid a large amount of duty.

Here Mr. Richards commenced to question witness with reference to the condition of Halladay before he went into Jones' office and got angry. The Judge ruled the evidence out.

Mr. GALT (to witness).—I do not exactly understand about the 1,507 bushels by the railway in the beginning of March—the 8 car-loads; were these 1,507 bushels represented to you as the contents of the 8 cars? They were.

Was that true? Did Halladay afterwards admit to you—

HIS LORDSHIP.—Stop!

Mr. RICHARDS.—Put no leading questions.

Mr. GALT.—I am not going to do so. (To witness.) Did Halladay ever make a statement to you afterwards with regard to the contents of those cars? After I had written to Port Sarnia on the subject, Halladay came and stated

to me that this corn had come to him in small lots ; and afterwards he made an entry of 1,442 bushels as also contained in the same 8 cars. This made up the full quantity.

To HIS LORDSHIP.—Halladay made the first entry in March, and the second in April.

Mr. GALT.—With regard to the entries in your books, did the parties themselves bringing the manifests and making the entries, state what it was themselves ? Those entries made by Chisholm when the cars came in they would make in their own invoices and sign in my presence.

Mr. RICHARDS.—These are not sworn to ? No.

You mentioned that the mates of the "Shook" were drunk ; do you mean to say both were so ? I cannot say. I am not positive.

To HIS LORDSHIP.—I thought they were all drinking ; one was very drunk.

ALFRED BRUNEL recalled and examined by Mr. GALT.—I understood you to say you made an investigation in December, 1864, of the business of the distillery up to Sept. 1, 1864 ? Yes.

Was Halladay present during the time of that investigation ? He was.

Had you any conversation with Halladay respecting the quantity of spirits which he then represented himself as holding ? Yes.

HIS LORDSHIP.—When ? Up to the 1st Sept., 1864.

Mr. GALT.—Have you any memorandum of what Halladay then represented himself as having on hand ? It was 83,080 gallons. I insisted on its being then entered in the stock book.

That quantity was represented to be what ? The stock he had in bond and all that he had. The portion of it in bond was about 40,000 gallons, I think and the remainder had paid duty and was entered for consumption. By the copy of the stock book now handed me, I see the quantity stated to be :—On hand, entered and paid duty, 40,728 gallons ; and in bond, 42,352 gallons.

HIS LORDSHIP.—Was that made up by Halladay himself ? Himself or his book-keeper, in Halladay's presence and with his consent. The quantity in bond was verified from the Collector's books, making a total of 83,080.

Mr. GALT.—Did you at the same time make enquiry as to the stock of corn or other grain on hand Sept. 1, 1864 ? I did.

Can you tell us the amount ? It was entered in the grain stock book at the time. I found fault with the Collector and Halliday because the stock books were not written up closely, and because there was an untrue balance represented as being on hand on Sept. 1. Thereupon Halladay, Arnold, the book-keeper, and Link, set to work to make up the stock of grain and liquor on hand, and after having made it out, Arnold, who had charge of the stock book, entered the amount in the stock book, and they were sworn to in my presence as being the true amount of the quantity of grain and spirits. I am not sure if the quantities were sworn to by Halladay ; but, at all events, they were consented to by him. These quantities were :—644,000 lbs. corn, 7,500 lbs. oats, 11,200 lbs. other grain, including rye ; 10,800 lbs. malt. The quantity of spirits I made up from the statement in their sales book, of which I made an abstract.

Mr. GALT.—I call on counsel for the defendant to produce that book ; they got notice.

Mr. RICHARDS.—We have not got them.

Mr. GALT (to witness).—Did you see the sales-book yourself ? I did. I held my investigation on the 19th Dec., 1864. I called for the books of the firm, under the clause of the statute. Halladay directed Chisholm to produce them, and he did so, and swore to them.

Mr. GALT (to opposite counsel).—Do you admit service of the notice to produce?

Mr. CROMBIE.—We never heard of the notice to produce the sales-book.

Mr. GALT read the notice, which called for the production of all books relating to the firm.

Service was subsequently admitted, but counsel did not produce the book.

Mr. GALT (to witness).—Were books produced to you purporting to be the sales-books ? Yes, and I examined them.

What did you find ? I made this abstract the first six pages myself. The remainder was abstracted by Striker & Davis, and a computation was made of the quantity and date, from the opening of the distillery till the 1st Sept., 1864. Mr. Borst, one of the firm, was present while the abstract was made, and, the strength not being stated in the sales-book on every occasion, the price at which it sold was noted, and the strength was put in this memorandum, at Borst's own suggestion, as to whether it was under or over proof.

Mr. RICHARDS.—When was that done ? Between the 19th and 23rd Dec., 1864, from the books produced on the 19th Dec.

Mr. GALT.—Was Halladay also present ? He was in and out. Borst and Halladay were both there.

Were other books produced ? The journal, ledger and day-books were produced.

Did you make any comparison of entries in the sales-book, day-book and journal with the ledger ? I endeavoured to do so, and could not make head or tail of the books. The book-keeper said they were the old books, and he could not vouch for anything before he came. They produced no other books.

After the seizure, was there any statement made with regard to the quantity of grain on hand ? Did Halladay make such a statement to you ? There was an account made up. The grain stock book should have been made up previous to the seizure. At the time I went there, several entries were not made, and I immediately wrote my name in the first vacant line of the stock book, so that subsequent entries could be shown. Arnold made several entries subsequently while I was there, and I compared the balances now shown me with the original stock book.

HIS LORDSHIP.—What entries were made after this ? After I went there the entries on the debtor side were—May 30, B. Sheppard, Chicago, received per schooner *Bahama*, 627,361 lbs. corn ; June 10, E. R. Henderson, Kingston, per Grand Trunk Railway, 126,000 lbs. corn ; June 29, per Prescott Malt House teams, 8,160 lbs. oats, and 3,200 lbs. malt. On the credit side there was for the last half of May, " Mashed 250,800 lbs. corn, 12,000 lbs. oats, 19,200 lbs. other

grain, which I understand to cover rye, and 6,000 lbs. malt." From June 1 to 15, they mashed 188,100 lbs. corn, 9,000 lbs. oats, 14,400 lbs. other grain, 4,500 lbs. malt. From the 16th to the 30th June, they mashed 177,650 lbs. corn, 8,500 lbs. oats, 13,600 lbs. other grain, and 4,250 lbs. malt. June 30, they credit themselves with 672,000 lbs. corn damaged, of the *St. Lawrence* cargo. On same day, for S. S. Halladay's stables, 44,800 lbs. corn; Borst, Halladay & Co.'s stables, 84,000 lbs. corn, the word "estimated" being written in pencil; and by balance on hand, 1,911,289 lbs. corn, 13,978 lbs. oats, 437,284 lbs. other grain, 20,198 lbs. malt.

Mr. GALT.—Was there any measurement made at that time of the quantity on hand; and if so, who took the measurement and assisted at it?

HIS LORDSHIP.—Of spirits?

Mr. GALT.—No.

HIS LORDSHIP.—We have now what that book represents.

Mr. GALT.—Yes; and I want to prove that what it says is not true.

WITNESS.—There was a measurement made of the grain about the 10th or 11th July, I think. The seizure was made on the 12th.

Who made the measurements? The measurements were made by Messrs. Davis and Wilson, with Halladay and Arnold present part of the time. I requested Halladay to be present himself, or have some one there. The object of the measurement was to see if the balance of the grain would correspond with the stock book. These parties made the measurement, and I computed from their statement.

Mr. RICHARDS.—Were you present? I was in and out.

How did you know Halladay was there? I requested him to be there, or send some one, and he was there part of the time.

To HIS LORDSHIP.—Mr. Davis was a Preventive Officer, Mr. Wilson the Collector of Inland Revenue.

Mr. GALT.—You say you computed the quantities of grain from the dimensions of the rooms. Have you got a copy of the dimensions with you? Yes; it is among my papers on the table. (They could not be found when Mr. Brunel went to turn them up, and Mr. Galt said they would be produced by-and-by.)

You calculated the quantities from the returns of the dimensions of the different buildings furnished by them? Yes.

State the computations you made from those dimensions. The quantities I made out were:—As being in the warehouse known as the Harvey Warehouse, 618,352 lbs. corn; in the bins in the Distillery proper, 1,703,000 lbs. corn, making a total of 2,321,352 lbs. From this I deducted the cargo of the schooner *Shook*, delivered subsequently to July 1—the date when this book was made up—981,960 lbs., leaving a balance of 1,338,392 lbs. as the quantity of corn on hand, according to these measurements, on July 1; rye on hand, 417,200 lbs., principally in the Distillery, I think; oats, 246,466 lbs., and malt 30,780 lbs. On the occasion of the second measurement, made with the view of handing over the goods to Halladay on payment of the estimated value, I instructed Mr. Striker to get assistance, so as to make accurate measurement, with a

view to estimating the value. Striker made the measurement with reference to the corn, and then telegraphed to me that he found such vast discrepancies between my memorandum and the quantity really on hand, that he would not do more unless I further instructed him, so that the rye, oats and malt were not measured a second time, the corn only going through the process.

After these statements had been made, was there any conversation between yourself and Halladay respecting what should be done with the material after the seizure? After I made the seizure, he persisted in working the Distillery. I was not clear that the law entitled me to take full possession, and did not therefore take positive measures until I had advice. I went to Quebec to get instructions in reference to it. Halladay and Chambers, of Brockville, and Solicitor Devlin, of Montreal, accompanied me to Quebec, and I found that Halladay and Devlin were going to try to induce the Government to come to a settlement, and not interrupt the work. I said I should be sorry to throw any obstacle in the way. I would not wish needlessly to depress the value of the property. At that time I had not discovered the enormous quantities of spirits shipped per the Grand Trunk. They saw the Minister of Finance, and I saw him. He instructed me to see the Attorney General and ask whether such an arrangement as that proposed could be legally come to. The Attorney General decided that no bond could be taken, but that the goods might be sold, with the consent of both parties, and the money be held, subject to the result of this suit. I returned with the view of having this arrangement made, and valuing the goods. Halladay then said he did not think the measurements were correct that had been made. I, of course, said the measurements had been already assented to by him, and I could not understand how he could raise objections then. He proposed that the whole of the grain should be weighed, but he said, let me go on with my Distillery while you are weighing; you can keep account of what I use. I said that would not tally with my instructions; that the whole thing should be sold before the Distillery was allowed to continue. He then said I must have it all weighed, for there is not the quantity there which has been represented by the measurement. I finally said: well, if it must be done, it will be a work of time. Nothing further, I think, passed with Halladay except some conversation as to how the funds were to be deposited. As to the measurements, I instructed Striker by letter to take Davis and such assistance as he required, and measure the grain, and told him to propose to Halladay that instead of weighing it in scales, they should get a box made, and make a computation according to the number of cubic feet. He had a box made containing 27 cubic feet, took the average weight of the grain per cubic foot, and then proceeded to take the cubical measurement of the granaries, and in that way computed the true quantities, which I have here. Striker made the measurements with Halladay. It must also be borne in mind that they had been working during two half months subsequent to July 1, and had used a portion of the grain in this way contrary to my order. These are the correct quantities: In the Harvey warehouse, 130,313 lbs. corn; in the cooper's shop, 57,656 lbs. corn, which was represented to have been moved from the Harvey warehouse

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in order to cool it; in one distillery bin, 249,924 lbs. corn; in another distillery bin, 418,669 lbs. corn, making in the Distillery 668,693 lbs. From the sworn semi-monthly returns, I find there had been mashed during the first half of July, 146,300 lbs., which would have to be added to the above quantity. On the second half of July, 94,050 lbs. had been mashed. The total quantity in the Harvey warehouse, cooper's shop, distillery bin, and what was mashed, reached 1,096,912 lbs. From that I have deducted the cargo of the schooner *Shook*, the entry tendered not being the same as reported, I have given them the advantage of it, and I deduct only 922,899 lbs. After I instructed Striker, I think I went to Kingston, and if I remember rightly, Striker telegraphed to me there, and wrote to me that he found such enormous discrepancies in the corn, that he did not think it worth while going on with the other grain, and would do nothing more until I instructed him. I went back to Maitland or Prescott.

Mr. RICHARDS.—What did you find? While in Kingston, I discovered at the Grand Trunk Station—

HIS LORDSHIP stopped witness.

WITNESS went on to say (in reply to Mr. Galt.)—In the stock book, the corn on hand is stated to have been 1,911,289 lbs. The quantity on hand was 174,013, showing a discrepancy of 1,737,276 lbs. I may mention that this is giving them what they claim for feeding, damaged cargoes, and everything they claim.

Mr. GALT.—Does that include the 41 car loads of corn entered by the Grand Trunk? No. Their amount from the invoices was 847,383 lbs.

Mr. GALT tendered the entry of the car loads made by Dyce & Smith.

Mr. RICHARDS objected.

HIS LORDSHIP.—Mr. Jones says he believes Smith was present, and proposed to make the entry at Maitland, and that then Halladay was present, asserting it was right.

Mr. RICHARDS.—I did not know that Halladay was making any assertion.

HIS LORDSHIP.—The entry does not purport to have been made by Halladay; but he was present at the time, taking an active part. The enquiries instituted with regard to the 41 car loads of corn resulted in the Collector satisfying himself that it never left Maitland. He charges Halladay with not sending it away, and he says, No, I did not.

Mr. RICHARDS.—It was in December, 1864, I first took evidence at Maitland. I had examined the Distillery several times before that, but cannot say precisely how often. The new law, requiring higher duty, came into operation in 1864. The department has special forms of "safes" to be used by Distillers. In Halladay's case the requirements of law as to apparatus was not complied with prior to that investigation in December. I complained, and he made all sorts of excuses. A glass dome, required by law, was wanting; also an overflow pipe. Again, one of the tubs was so ill-covered that any amount of liquor could have been stealthily abstracted. There was a second pipe wanting, too, the lack of which left a hole which could be used for fraudulent purposes. I threatened to stop the Distillery if he did not put his apparatus right. He made some improvements soon after. In January, I think, when I

returned, I found a pipe replacing the one which had been broken off; but it was only attached by screws, and spirits could still be surreptitiously drawn off. I complained of this. In December, Mr. Davis, Preventive Officer, a practical distiller, was with me at the investigation. He examined, at my request, the pipes between the safe and the close receiver, and the means of abstracting spirits from the close receiver. There are two receivers, 8 or 9 feet high. The mixing room was directly over, with trap-doors opening over the receivers. By opening these, and looking down, nothing wrong appeared. On going down in July last, we found a great defect in the lid of one of the tubs—a warping, which left a hole that I could put my hand through. The overflow pipe was required to be attached by law. It leads off into the low wine tub. The pipe at the side of the metal safe had been set right by January, 1865. The top of one of the tubs was warped. The top part of the lid lapped over about $1\frac{1}{2}$ inches all round. This, however, was the case on only one of the receivers. The other was so situated that I could not get at it through the trap-door without moving a large vessel. My Deputy should have seen to it, notwithstanding that difficulty. There are iron bars over the door, fastening it down. It was two or three weeks after the first seizure that I observed the opening in the receiver. I think it was in the beginning of August. Mr. Merrill was with me when the discovery was made. It was never observed before. I examined the “doubler,” which was not according to the requirements of the department, but there was nothing wrong so as to help the abstracting of liquor. There is a pump from the low wine tub to the doubler, which I complained of; but I do not think any spirits were drawn off in that way. The man-hole opens directly into the receiver. I put my hand and part of my arm in. I told the circumstance to Merrill and Wilson. I did not tell Halladay of it, for I do not think I have had any conversation with him since. The top of the close receiver was, I think, naturally warped, not pressed down. The trap-door over the other receiver was covered by some large utensil, which Merrill and myself could not move. The trap-door was from 18 to 24 inches square. The locks used are different, requiring different keys. Some of the locks were sealed with paper in such a way that the lock could not be opened without destroying that paper, which paper was put inside the cover of the lock, and should bear the initials of the Government Inspector. At the time I discovered the warp in the lid of the tub, in the beginning of August, the tub was, I believe full of water. Liquor had been in it till the end of July. In December, 1864, I made them enter up into their stock book the spirits on hand. They had 83,080 gallons. I do not think the entry in the stock book had been made before I called on them to do so. In making the abstracts from their books, we copied the number of packages—that is, barrels, puncheons, &c., the number of gallons contained in each, and the prices at which the liquor was sold. Besides the abstracts made by me, some were made by others at my request. The abstracts cover practically the whole period to September 1, 1864. Messrs. Striker and Wilson measured the dimensions of the bins and buildings, and on their returns I made the calculations, allowing the proper amount of cubic measure to the bushel,

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which measure was found, by actual experiment, in this way:—Having ascertained how much cubic space a bushel, by weight, required, I made that a divisor of the whole number of cubic feet occupied by the grain the dividend, and so ascertained the number of bushels. In carrying out this process, they made a box, containing exactly space of 27 cubic feet. The grain from the Harvey warehouse, which filled that box, weighed 1,125½ lbs. The corn in the Distillery, known as the "Shook" corn, weighed per box full of 27 cubic feet, 1,280½ lbs. Since Halladay & Co. commenced distilling, they may or may not have paid \$130,000 duty. I cannot say. The Distillery has been closed since August last. Sometime in September they were formally forbidden from entering the Distillery unless in the presence of our officer. Mr. Merrill, Collector of Inland Revenue for the District of Grenville, is in charge, and has watchmen there day and night.

HIS LORDSHIP.—This has no bearing on the case.

JAMES MULLEN examined.—I purchased spirits from Borst, Halladay & Co. through Arnold. On the 30th May, 1865, I bought 21 puncheons, 50 o. p., containing 2,489 gallons, equal to 3,734 proof gallons. On June 28, 22 puncheons, 49 o. p., 2,572 gallons, equal to 3,832 proof gallons.

To Mr. M. C. CAMERON.—I have but slight personal recollection of the transactions, and I am guided merely by the invoices. These are not receipted by Arnold. I think we paid for the liquor by an acceptance. We made the purchase in Montreal; I presume in our office. I have an indistinct recollection of one of the car loads, but none at all of the others. We never bought any before from Halladay & Co.

A. LAVERDIER examined.—I reside at Point Levi. I am Freight Checker of all goods that come there by the Grand Trunk. The list of car loads shown me (a paper being put into his hands) I have examined, and found correct. The cars mentioned on this list were received at Point Levi, and I checked their contents—that is the packages or puncheons—but of course did not ascertain what was in the casks. When I deliver car loads, I get receipts. On arrival of the loads, I compare the contents with the way-bills, and when found correct, I attach my initials to the bills, as my initials are attached in all the cases mentioned in the lists. I am positive as to their correctness. (The list was handed into Court to be used as evidence.)

ALPHONSE DOUTÉL recalled and examined by Mr. M. C. CAMERON.—This is the Grand Trunk Co.'s book (producing one.) A clerk employed by the Company made the entries in this book, and I know that they are correct, because they correspond with our books. Shedden is the cartage agent of the Company, but I cannot say whether the horses and carts used by him are the property of the Company. We have freight sheds for receiving goods, fifteen "berths" each, and capable of containing two car loads. Each berth is numbered, and the contents of different cars are put separately in piles right and left, having an empty space between. We can tell from which car any pile came, in this way:—One barrel or package from each car load is placed near the door, alongside the pile to which it belongs, and is marked on the end with

the number of the car from which it came. This enables us to show unmis-
takably from which car such and such a pile of goods in any berth comes. In
the removal of his goods, a consignee sends his carter, who gets the way-bill
from a clerk, presents that to the foreman in charge of the goods, who there-
upon gives up the goods. Then a receipt is made out, a copy of which the
carter takes with him, and which shows the goods he takes away. When the
goods are safely delivered, the receipt taken by the carter is returned to the
office, and pasted into a book opposite to the duplicate. In spite of our care,
mistakes at times arise, and goods get astray. But I will guarantee none of
the whiskey in question went away.

GEORGE LONGLEY examined.—I examined Halladay's stock book (this
one), No. 2, from September, 1864, till 31st December; 57,351 gallons appear
from it to have been removed by the Grand Trunk Railway, and 16,988 gallons
removed by other means—drays, teams, &c. The total is 74,339 gallons.
Again, I find that from January 1 to June 30, 191,352 gallons were removed by
the Grand Trunk Railway, and by other means, 28,291, making a total of 219,-
643 gallons. The grand total of gallons sold and disposed of is 293,982. In
my estimate I made three deductions:—First, for liquor lying in bond in the
warehouse, 19,280 gallons; then 24,504 gallons; and lastly, 18,584, making a
total of 61,878. The total quantity entered in the stock book on the 1st
September, 1864, is 83,080 gallons. There was taken from the close receiver to
the end of December, 67,694 gallons; and from 1st January to June 30, 173,-
800, making a total of 324,574 gallons. Deducting 74,339 and 219,643, making
a total of 293,982 gallons, a balance remains of 30,592 gallons, which agrees
with their stock book.

A. N. STRIKER examined.—I reside at Prescott, and am Collector of Cus-
toms there. Was at Maitland in July last, and superintended the measurement
of grain at the Distillery. Mr. Wilson, Collector of Inland Revenue, and Messrs.
Davis, Jerrolds, &c.; for the greater part of the time, Halladay were present.
We measured by means of a tape line. I know nothing of the first measure-
ment. (On stating this, witness was allowed to go for the present, in order
that the Court might first hear the evidence of Mr. Davis, who was at the first
measurement.)

JOHN DAVIS examined.—I assisted at the two measurements made
of Halladay & Co.'s grain. The first was made on the 11th July. Halladay,
Arnold and Wilson, Collector of Inland Revenue, was present in most cases.
We measured the inside of the buildings. In some cases the outside. The
Harvey warehouse was 76 feet long inside. Afterwards measured, and found it
only 68 feet, 10 inches. This last time, Halladay or Arnold held the end of the
tape line, showing the length, and announced the figures. The width the first
time was 31 feet. The depth of grain upon the floor we took by dipping the
grain in various places, and taking the average. On the second floor, we
measured grain, occupying a portion of the floor. It was 25 feet wide, 21 long,
and 6 feet deep. On the upper floor, we measured oats. As to the figures

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which Mr. Wilson set down, I believe them to be correct, but cannot swear to them.

At this stage of the proceedings—half-past six, p.m.—the Court adjourned till the following day.

FOURTH DAY'S PROCEEDINGS.

THURSDAY, January 11.

Court sat again at ten o'clock, a.m., Hon. Justice JOHN WILSON presiding.

A. BRUNEL recalled and examined.—I have the semi-monthly returns made by Halladay & Co. from the commencement of their Distillery till the 1st September, 1864. The first return is dated September 19, 1863. These returns should show the total quantity of spirits manufactured by them within the period mentioned, and the total duty paid by them. (Returns put in.)

MR. DAVIS examined by Mr. GALT.—In December, 1864, I was with Mr. Brunel when he discovered that a pipe in the Distillery had been broken off, leaving a hole through which a large quantity of liquor could be abstracted. On the 2nd and 3rd of August, and again on the 14th, I was with Mr. Brunel at the Distillery. On the latter occasion, we examined the close receivers. O'Donohoe was present when I found the corner of one of the doors of the close receivers so warped that there was an opening through which spirits could be stealthily drawn off from the receiver. O'Donohoe was Halladay's rectifier.

Hon. Mr. CAMERON.—Were you stationed in that part of the country as an officer of excise? Yes; from October, 1863, till 11th October, 1864. On several occasions, and in the course of my duty, I was at the distillery—four or five times in all. Was there three times on duty. I am a practical distiller.

When you went on duty, did you make what you believed to be a thorough examination in reference to all the particulars you considered necessary as an officer of excise? I examined it from instructions by Brunel.

I asked, did you make a thorough examination? Yes.

Did you find everything right on these occasions? Generally, in very good shape during that period.

On the occasion you found the pipe broken, did you ascertain when that had happened? The only knowledge I had of it was by Brunel asking Wilson, who said—

MR. GALT.—Stop now.

HIS LORDSHIP.—I think his answer would be good.

WITNESS.—He was of opinion that it had not been long done, as he had not noticed it.

Did he not say the very day it had been done? He did not speak of the day.

In your judgment, what quantity of spirits could be taken out by that breakage in 24 hours? It would not be a very large quantity.

I suppose when you found it was broken, you experimented on it yourselves. How much did Brunel take out? About three quarts or a gallon. Do not know in what time. It was a stream coming through a seven-eighth of an inch

hole, with an inch head. It ran slowly. Could not form an idea as to what a stream of that size would run in a day.

To His Lordship.—They run about three charges an hour. I first noticed the warping of the close receiver on the 14th August, 1865.

What caused it? Swelling of the head, from moisture. During my investigations in December, I examined both—looking over the head and under the beam—and they looked pretty well up then. Did not find anything wrong; nor did I, on any other occasion, except that before mentioned.

What do you suppose to have been the immediate cause of the opening you have spoken of. Did it arise from the withdrawal of the spirit and the putting in of the water? Or what? By the head swelling.

What was the cause of that? Is it an inevitable consequence in some instances? Most of the receivers warp, and sometimes “stags” are put across.

What I want to know is, suppose a vessel such as that, constantly filled with high wines, is emptied, and hot or cold water poured into it, would not the effect be to destroy it? A vessel used with nothing but high wines would warp, I believe, if the high wines were taken out, and it were filled with hot water.

Could you judge of the time the tub had been in that state? I could not.

On these occasions, when you went there on duty, had you every facility? Did you sleep there once or twice? I had every facility, but did not sleep there, more than once.

Was it you discovered the warping in the stave? I called Brunel's attention to it.

How long did you remain in the distillery on your official visits? Thirty-seven hours on one occasion, and not more than three or four hours on any other occasion.

Do you know that that pipe spoken of was replaced immediately? I do not.

Did you ever examine the large worm? Yes, in December. I also tested the close receiver. The examination was completed on the 23rd October, 1863.

What did you find was the capacity of the close receiver? I got instructions to measure the close receivers, and had to measure them as I thought best, either by dimensions or actual measurement. I considered the truest way was to measure by water. (Here witness illustrated his remarks by a model.) I got a puncheon, and with a stamp measure galled it in, and filled the puncheon, 114 gallons, and when full dropped it into the close receiver. There were indications put on the gauge plate, and I attended to the marking. I put in puncheon after puncheon, till it got up to 6042 gallons. It was then within 11 inches of the top, and could not be marked more.

Hon. Mr. CAMERON.—Each receiver held that? Each receiver; and the measurement was marked on the outside of the tubs, according to the statute.

What was the measurement of the puncheon, as you gauged it? $117\frac{1}{2}$ —very nearly 118 gallons.

When you actually measured it by the gallon, it was 114? Yes; making a difference of $3\frac{1}{2}$ or 4 gallons per puncheon.

Had you a standard measure in doing it? Yes; I went specially for one to Prescott, and used it. There was a measure at Maitland; but I did not care to use it.

After Sept., 1864, was there any change made in the receivers? No.

MR. GALT.—When was it you remained at the Distillery the 36 hours? The 9th Nov., 1863.

Where was your station as a Preventive Officer, in Upper or Lower Canada? Up to Jan. 1, 1863, in Upper Canada. I was in Montreal and Laprairie from January 1, 1863, to May, 1864. I was in Prescott up to Oct., and then in Montreal till the 1st June.

MR. STRIKER recalled and examined by MR. GALT.—Were you present when the measurements were made of the quantities of grain in the Distillery at Maitland? Yes; on July 31. The document produced is in my handwriting, and is correct.

MR. GALT.—I will read it—it is:—

“Maitland Distillery, July 31, 1865.

“Harvey Warehouse, corn; average depth of corn, 1 foot 7 inches; width, 28 feet 9 inches. Total length, 70 feet 10 inches—less a deduction of two feet.”

WITNESS.—We tested the grain in this warehouse in a box—a cube of 3 feet inside; measurement, 27 feet. The gross weight was 1229 lbs., less a tare of $103\frac{1}{2}$ lbs., making 1125 lbs., equal to about 20 bush., $5\frac{1}{2}$ lbs. That was in the Harvey warehouse, on the lower floor. The upper floor contained oats in good condition. Did not measure the grain on this floor, as it was not in shape. Distillery corn-bin, upper floor: corn bright and in good condition. Average depth of grain ascertained by six measurements, 3 feet $3\frac{1}{2}$; length of grain in bin, 44 feet 8; width, 36 feet 6. Total weight of grain in box, 1384 lbs., less allowance for weight of box, $103\frac{1}{2}$ lbs., leaving it 1280 lbs., equal nearly to 23 bushels. Distillery bin, lower floor; corn bright and in good condition. Average depth, ascertained by six measurements, 6 ft. $10\frac{1}{4}$; length, 35 ft. 3; width, 36 ft. 7. Rye bin, in Distillery: length of bin, 29 ft. 2, less 1 ft. 6 for an opening; average depth, ascertained by four measurements, 4 ft. 10; width, 21 ft. 7. Malt bin, in Distillery: depth, 4 ft. 4; width, 5 ft. 2; length, 6 ft. 10. Corn in hopper not measured, but assumed to be 20 bushels. Then, corn in cooper's shop—sample same as in Harvey's warehouse: depth, 3 ft.; width, 21 ft.; length, 22 ft. In cooper's shop there were oats in good condition: depth, 2 ft. 8; length, * * ; width, 21 ft. 2. On the mill floor I found 33 bags oats and 8 bags barley—assumed to be 16 bushels. Halladay said it had been brought in by customers since the seizure.

MR. GALT.—Who made the calculations based on these measurements? I made them. In the Harvey warehouse, lower floor, I found 130,599 lbs. In the Distillery corn-bin, upper floor, I found 250,511 lbs. Distillery bin, lower floor, 419,198 lbs.

Corn in cooper's shop, what did you estimate that at? 57,776 lbs.

HIS LORDSHIP.—That makes a total of 856,104 lbs. corn.

Mr. GALT.—How much rye was there in the Distillery rye-bin? I did not compute the quantity.

Hon. Mr. CAMERON.—I do not quite understand my learned friend's object just now. Is it to show that we had a quantity of grain on hand?

HIS LORDSHIP.—They say you not only sold so much whiskey, but had the means of making it.

Hon. Mr. CAMERON.—And they show the capacity of the building; but was the grain all there at the one time?

HIS LORDSHIP.—They are showing the grain at this time.

Hon. Mr. CAMERON.—I do not see that the fact of showing a certain quantity of grain in our possession shows that we made a certain quantity of whiskey at a particular period. Is that the object?

HIS LORDSHIP.—No; the object is to show the quantity left when they stopped, which would be taken from the gross quantity put in. And then they say, you distilled the rest.

Hon. Mr. CAMERON (to witness).—Did they make any representation as to quantity? No; but Halladay was present and assented to the measurement we made.

Was that the time Mr. Halladay's boat was seized? Yes; I was directed to seize the boat, and—

HIS LORDSHIP ruled that the evidence as to their boat was inadmissible; they had nothing to do with it.

Hon. Mr. CAMERON.—Have I not a right to know why the boat was seized. It is connected with the seizure in this case; and I propose to ask the witness why the "Pleasure" steamer belonging to Halladay was seized.

HIS LORDSHIP.—If you will stop at that—

Hon. Mr. CAMERON.—No; I will not undertake to do that.

Mr. GALT objected to the enquiry as irrelevant.

Hon. Mr. CAMERON (to witness).—Did you put down the measurement yourself? I did.

Did you make them; or were they called off? Part I made and part I did not. The measurements in the Harvey warehouse and coopers' shop I examined with the line and guage-rod myself.

Who held the line. Davis and Jerollds.

During all the measurements? In the Harvey warehouse I held it myself.

Mr. GALT.—Was Halladay present? Not when we commenced; but we went over it again for him.

Mr. GALT.—Having made the statement to the jury that I would offer evidence that Halladay had taken certain steps to suppress evidence in this case, I am prepared at this stage to introduce evidence on that point. But in deference to his Lordship's ruling that I could not go into the question with regard to the false books at Maitland, I suppose I cannot go into this. Your Lordship held the former matter to be irrelevant to the present enquiry.

Hon. Mr. CAMERON.—No; but it was that you could not ask that question in reference to what the station master did.

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HIS LORDSHIP.—Do you propose to prove something about this assault spoken of?

MR. GALT.—I said I was prepared to do so. Now I say I understood your Lordship to rule before that I could not go into the question of these false books.

HIS LORDSHIP.—Not in the way it was put in, I meant, not as to the admission of the station master with reference to these books. As to this assault you propose to enquire into, I would say, as in the case of the steamboat, that there might be a suit as to this assault, and then the enquiry would properly be made.

MR. GALT.—Yes; there is a suit. I now wish to tender my witness.

HON. MR. CAMERON.—You know very well you can not examine the witness.

MR. GALT.—I call for Armstrong.

MR. ANDERSON.—The evidence is tendered to show guilty knowledge.

JOHN A. ARMSTRONG, examined by MR. GALT:

What is your occupation? Government detective.

Were you at any time at the village of Maitland? Yes, on the first day of November last. Went there some few days before. Between the 20th Oct. and 1st November. I was there once or twice.

Are you acquainted with the defendant? I am.

Under what name were you known at Maitland? James Street. No; James Wait.

HON. MR. CAMERON.—The witness does not know which of his names he used.

WITNESS.—I used both. I saw Halladay two or three times.

You have referred to being at Maitland Nov. 1st,—did you see Halladay then? In the evening.

State what took place between Halladay and yourself that evening. Halladay came to me and asked me when I came, and I told him. He asked me if I had bought the horse of Wilson. I said I had not. He then told me he had one for sale. I asked him if it was pretty fast. He replied it was, and wanted me to go and see it. I asked him where it was and he said it was just "down there," pointing to the Post Office—some short distance from where we were. I—

MR. M. C. CAMERON.—If my learned friend says this is merely preliminary to taking evidence of the assault, I object.

MR. GALT.—Yes; I give you the opportunity of taking the objection.

HIS LORDSHIP (to Mr. Galt).—Had the witness any conversation with Halliday respecting the Distillery?

MR. GALT.—No.

HIS LORDSHIP.—Then it is no evidence in this case.

MR. GALT.—I want to show that he was there, and was known to Halliday under his true name.

HIS LORDSHIP.—Supposing that?

MR. GALT.—If your Lordship hears the evidence, you will be satisfied of the nature of the assault, and I will have made good my statement, that in attempting to suppress evidence in this case, Halliday, with two other men, were guilty of an assault to commit murder.

HIS LORDSHIP.—I rule that it is not evidence.

Hon. Mr. CAMERON.—If my learned friend has any such testimony to give, let him have it.

HIS LORDSHIP ruled it out.

Mr. GALT.—I have only one question to Armstrong. (To witness). Did you know Lewis of Ogdensburg? Yes; he is a locksmith.

ALBERT WHITNEY examined by Mr. GALT.—Are you book-keeper to Wiser & Co., of Prescott, Distillers? Are you aware of any sale of corn being made to Halliday by Wiser? Yes. The deliveries took place in January and February, 1865.

What was the quantity sold? Nine thousand bushels of corn, delivered at our Distillery, to their teams.

Was there any other grain? Yes; 1,000 bushels of rye.

How was it taken away? By their teams, or teams employed by them. It was on his order.

Did you buy any large quantity of spirits from Borst, Halladay & Co? Yes. From September, 1864, to July, 1865, we bought 19,389 $\frac{8}{16}$ gallons proof.

What were the dates of these purchases? They are scattered over some twenty-two different lots:—Sept. 26, 1864, 244 gallons 50 o. p.; same date, 259 gallons rye whiskey; Oct. 20, 1864, 348 gallons spirits 50 o. p.; Nov. 11, 424 $\frac{1}{2}$ gallons; Nov. 19, 190 gallons; Nov. 22, 605 gallons; Dec. 12, 250 $\frac{1}{2}$ gallons; Dec. 13, 823 gallons; Dec. 14, 476 gallons; Dec. 15, 213 gallons; Jan. 19, 1865, 402 gallons; Jan. 26, 1639 gallons; Feb. 10, 812 $\frac{1}{2}$ gallons; Feb. 16, 1,214 $\frac{1}{2}$ gallons, and 422 gallons rye whiskey; Feb. 24, 498 gallons; March 2, 747 gallons; March 7, 986 gallons; March 14, 415 gallons rye whiskey; May 8, (3 lots), 165, 280, and 41 gallons. Some of this was strong spirit, 65 o. p., and the rest 50 o. p. May 31, 1865, 627 $\frac{1}{2}$ gallons.

Mr. GALT.—I have now 1881 in my list.

WITNESS.—I have no such quantity. Then there is July 7, 740, 50 and 493 gallons.

Mr. GALT.—The stock-book ends on the 30th June, and I have charged nothing for the last two entries.

Hon. Mr. CAMERON (to witness).—Have not Borst, Halladay & Co. a large warehouse at Prescott? Yes; all the whiskey we bought from them was delivered by teams.

JOHN MILKS examined by Mr. GALT.—Look at the book I hand you,—is that signature yours? Yes.

What is your occupation? Carpenter and joiner.

Did you ever team? No.

Did you ever receive corn? I was at the station on one occasion, and through the station-master I signed the book you have shown me.

Mr. GALT.—It is a receipt given by witness for a quantity of corn consigned to Borst, Halladay & Co.

WITNESS.—The car loads represented here were at the station then.

Mr. GALT (to opposite Counsel).—The entry on the stock-book is June 10. These are the entries made after Mr. Brunel had signed the stock-book, which

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were added by Mr. Arnold. Among them was the entry of 126,000 bls. of grain, —eight car loads— from Kingston, per the Grand Trunk Railway. (To Witness). Under date the 19th of May, Mr. Milks, do you find your signature opposite to a car load of corn from Kingston? Yes.

Did you receive it? I only signed the book.

HIS LORDSHIP.—At this date are there not six car loads?

Mr. GALT.—These six are entered in the stock-book, besides which, there are nine not entered.

WITNESS.—Six cars are signed for on the 19th, 20th, and 22nd May.

What became of them? I did not unload them.

You are here to tell us the truth, Mr. Milks, and the whole truth.

Mr. M. C. CAMERON.—Allow him to tell his story.

HIS LORDSHIP.—He is Mr. Galt's witness.

Mr. M. C. CAMERON.—We cannot allow my learned friend to force even his own witness to say something against us.

Mr. GALT (to witness).—Did you receive these car loads? Yes, at the station.

What became of them? Cannot say.

What became of the corn in them? I do not know.

Did you ever tell Halladay you received these car loads? No; I signed for them through the Station Master Bowker.

You mean to say that these cars were *there*, at any rate? Yes.

Did you say you signed these on the 14th June? Yes.

On the 13th and 14th June, I see you receipted 4 cars. Were they there? Yes.

Can you say what became of them? I cannot.

HIS LORDSHIP.—What was in them?

Mr. GALT.—Corn. (To witness).—On June 15, there are three cars, did you receipt for these? Yes.

On June 16, 1 car corn—did you receipt for that? Yes.

And again, on the 17th June, and then you receipted that? Yes.

In whose employment were you at the time? Halladay's.

Were you employed in the Distillery? To do carpentering.

Did you never mention to Halladay, or any one else, having receipted for these cars? No; not to my knowledge.

Just about the time you signed these receipts, did you see corn carried into the Distillery? There was some, but I could not say what quantity, or where it came from.

Have you no idea? No idea.

Did you not believe that that corn came from these cars? You are standing here to give evidence on oath, and need not be looking at my learned friends, Halladay, or any one else, before you answer. To the best of your knowledge and belief, what became of that corn?

Hon. Mr. CAMERON.—Is that a proper question?

HIS LORDSHIP ruled it was.

Mr. GALT (to witness).—Well, to the best of your knowledge and belief, tell us what became of that corn? I cannot say positively.

What do you believe became of that corn? I did not take the corn.

TO HIS LORDSHIP.—I may have a suspicion, but cannot say positively.

Mr. GALT did you ever see any spirits withdrawn from that Distillery in the absence of the Collector? I did not.

Do you know that it was ever done? No.

You have no knowledge of it whatever? None.

What was your particular business in the Distillery? To attend to any business. Any business I was sent on.

Did you never see any spirits pumped out of the receivers in the absence of the Collector of Revenue? Only through the right pump, when it was unlocked. I have seen spirits pumped.

Who pumped it? I cannot tell; the pump was running.

Who was present at the time? It was when I was laying some lead pipe from the receivers. I think Geo. Lambert was present at the time.

Anybody else? Not that I remember.

Was Lambert the only person present? The pump was running, and no one was present only Lambert and I.

Was Mr. Wilson, the Collector of Inland Revenue, there? He was not.

Any officers of Government? No.

Who was Lambert? He was a coppersmith.

Mr. GALT.—Now we know where the spirits went.

A JURYMAN.—When you speak of the pumps running, was it after it had been unlocked by the proper officer.

Hon. Mr. CAMERON.—That is the very question I was going to put.

WITNESS.—Yes.

A JURYMAN.—In reference to the corn you receipted in the book, did you receipt it of your own accord? I did it through the Station Master; at his request.

Do you know why you were asked to sign it? So that the books would be straight.

Who did you expect would get the corn? I received the corn.

What did you do with it. Left it to him to do what he liked with it? I understood through him that—

Hon. Mr. CAMERON.—Never mind; you can only say what you know as a matter of fact.

HIS LORDSHIP.—How came you there to receipt for corn if you were a carpenter? I was sent there.

HIS LORDSHIP.—To receipt it? No; he did not tell me what his object was. He would not explain it.

HIS LORDSHIP.—Why did you do it? No answer.

Why did you take the corn? I do not know.

Do you mean to say you do not know where it went to? Was it left to the pigs to eat? No.

Where was it sent? To the waggons.

Whose? Halladay's waggons that were sent up there.

PETER ARNOLD re-called for cross-examination.

HIS LORDSHIP.—Have you no more witnesses Mr. GALT?

Mr. GALT.—I have not, my lord, that I am aware of.

PETER ARNOLD cross-examined by Mr. RICHARDS. The Maitland Distillery is between half and three quarters of a mile from the Maitland Station. The Distillery is in a hollow. At the station there is no village. All the village there is, is on the road running on the north side of the Distillery. Can see the Distillery from the station. It is a wind mill and can see the top of it.

Do you know who made the entry in the stock book as to the amount of liquor on hand? I made it on the 1st September, 1864.

Who kept the stock-book? I did, for Halladay.

The stock consisted of liquor in the Distillery and some in bond? Yes; 83,000 gallons in all; 40,000 odd gallons being in bond.

Where was the liquor? In different places; some in the cooper's shop, some in the warehouse. I think the bonded lot was in Harvey's warehouse.

Where was the liquor belonging to Read? Did you enter it in the stock-book? No; because it was sold before September 1st, and was not our property.

Where was that liquor? It was in the cattle barns.

How many of these cattle sheds are there? Eleven.

HIS LORDSHIP.—How many were thus stored? Between 300 and 400 puncheons.

Mr. RICHARDS.—You never took that into account in your stock of liquor on hand? You were only required to keep a stock-book from September 1st? Yes, and the liquor did not belong to Halladay then.

Are you aware of Halladay buying, or having liquor before the stock-books were opened? Yes; he bought from other parties. A large quantity was brought from Toronto. I saw it in the old stock-books, 80,000 or 100,000 gallons.

Are you aware of the firm having a large quantity stored in Montreal before September 1st, 1864? Yes; 221 puncheons, I think.

That was not entered in your stock-book? No; it did not belong to us; it was in Montreal in store.

Do you know of Borst buying whiskey in store? I heard.

Do you know of any being sold by Borst?

HIS LORDSHIP.—What Borst did is not relevant.

Mr. M. C. CAMERON.—The whole course of the examination has had reference to what Borst and Halliday have been doing.

HIS LORDSHIP.—Whatever the witness knows himself of the transaction is relevant.

Mr. RICHARDS (to Witness).—Do you know of Halliday having whiskey there other than what came from Maitland Distillery? I know of it from what he said; but I did not see any transactions of the kind.

Do you know of Mr. Borst being in Montreal, selling whiskey? Yes.

Have you any knowledge that Borst sold whiskey? No.

Have you any doubt that he did sell whiskey there which did not come from Maitland Distillery?

HIS LORDSHIP.—You objected to a similar question before.

MR. RICHARDS (to witness).—To the best of your knowledge and belief, did he sell it?

HIS LORDSHIP ruled the question out.

MR. RICHARDS (to Witness).—With regard to the grain; do you know as a fact that grain will lose in weight between the period of purchase and delivery? It depends altogether on the kind of grain.

Suppose green corn were bought in Chicago, would it not lose in weight before it could be delivered here?

HIS LORDSHIP.—Do they sell green corn in Chicago?

MR. RICHARDS.—Yes. (To witness).—Was the corn bought in Chicago fresh? In what year? In the fall of 1864 it was new.

Does such grain as that lose in weight during transportation? Yes; a great deal.

Did you ever weigh any of the cargoes coming to the distillery up to the time the "Shook" cargo came? No; we always took the weight from the bills of lading. We entered it without weighing it at the Custom House.

Do you know of corn being weighed in the distillery after the question had arisen about the corn? Yes; we made a box 3 feet square, and Jerrolds, Davis, Striker and Wilson were present when the box was measured. We filled it from the new corn just come in, and weighed the lot, comparing it with that already in warehouse, and we found a difference between them of 155 pounds. The one weighed 1,280½ pounds, the other 1,125½ pounds. The 1,280 pounds corn was the new, and the other the old. The cargo that arrived in July was the new one.

Some insinuations were made with regard to your holding the tape line at the time you assisted in measuring the warehouse? I had hold of the end of the tape line and measured correctly. I did not shorten it.

With regard to the entries in the stock-book—a great deal was said about the liquor sent to Holiday & Co. not being entered, and also the liquor consigned to Reid—can you tell us was the liquor that went to Holiday's, belonging to Borst, Halladay & Co? It was consigned to Holiday.

Was Holiday more than a warehouseman? No.

Was that liquor the property of Borst, Halladay & Co.? I presume it was.

Any liquor Holiday & Co. had, connected with Borst, Halladay & Co., was it Borst, Halladay & Co.'s whiskey? Yes.

Why did you not enter it in the stock-book? It was not entered till sold, and I was not at Maitland when it was shipped. I explained to Brunel that I could not enter it till it was sold.

You understood the entries in the stock-book to refer to the sale of the liquor? Yes; I understood it was not necessary to enter it till sold. I explained this to Brunel, and told him, too, that it was impossible for me

to enter it in the stock-book, as I was frequently away when it was shipped. Mr. Brunel made no objection to my not entering it in the stock-book till it was sold. I explained to him that the liquor was consigned to me, and that when it was sold, I always entered it.

You had a large quantity of other liquor at Montreal? Yes.

Did you sell out of the old liquor—out of Reid's—and out of the quantities sent down? Yes.

Did you enter the quantities that you considered came from the distillery? Yes; but I did not enter any that had nothing to do with the stock in the distillery.

Do you know where the safe (model produced) stands in the distillery? Yes; it is in the most public place, where men are constantly passing; it is on the second floor.

Could any whiskey be drawn out of the broken pipe without persons passing seeing it? No: it would be seen by every one.

Have you ever known of anything improper about the distillery, or of any liquor being secretly abstracted from the pipes or receivers? No.

Was it possible to get it out unless through the close receiver? I do not think so.

As far as you know, everything was right about the distillery? Yes: I was not there much; but was in Montreal a good part of my time.

Do you know anything of the pipe being broken? I do not.

How many head of cattle had you there? About 1,000, and 200 or 300 hogs. The persons feeding them had access to the grain—(meal)—that would be in case of a break-down.

Were there frequent breaks-down in the distillery? There were: more the first year than the last.

Do you recollect a cargo of grain coming by the *St. Lawrence*? Yes: I bought it in Chicago myself. It left late in the fall of 1864—was the last vessel shipped off. Got frozen up in the Welland Canal.

Was that cargo in very bad condition? It was. I said it was so badly damaged that it would not pay the freight. It was so bad it was not run through the elevators, though we had a man stationed at Port Dalhousie to run it through. Puncheons will show more by gauging than actual measurement, from 4 to 6 gallons. I was present throughout when the first measurement of grain was made. It was correct, as far as I know. I held one end of the line; Davis called out the measurements, and Wilson took them down. The next measurement was made from eight days to a fortnight after. The first measurement was before the seizure. We kept on distilling after the first measurement, till the 25th.

The Government seized all the liquor you made during that time? Yes.

Mr. GALT.—What quantity of spirits were there in Montreal in July 1, 1865, belonging to Borst, Halladay & Co.? I do not know.

Are you aware there was any? I could not say.

Was Reid's spirits that lay in the cattle sheds made at Borst, Halladay & Co.'s Distillery? I suppose it was; and have no reason to think otherwise.

You say there were between 300 and 400 puncheons? Yes.

HIS LORDSHIP.—What did you average the puncheons? 174 proof gals.

MR. GALT.—Tell me the contents in proof gallons of 362 puncheons of spirits at 50 o. p.—62,988 gals.

Did you say that was in hand before Sept., 1864? I did.

MR. GALT.—(to the Court)—Now, I have in my hand an abstract of the quantity of grain and other substances used by Borst, Halladay & Co., subject to duty, during the period from the beginning of the distillery to the 1st Sept., 1864; and I will read it over to witness and let him check it to see if it is right. (To witness)—Look at the paper—it is in wine gallons, and proof. The first entry is from the 19th to the 30th September, 1863, 2,109 gals.; from the 16th to the 31st October, 10,459; November 2nd to 14th, 16,518; November 16th to 30th, 7,155; December 1 to 15, 22,336; December 16 to 31, 15,242; January 1 to 15, 1864, 20,259; January 15 to 31, 22,688; February 1 to 15, 19,364; February 16 to 29, 18,551; March 1 to 15, 21,261; March 16 to 31, 21,792; April 1 to 15, 11,782; April 16 to 30, 17,829; May 1 to 15, 18,514; May 16 to 31, 17,228; June 1 to 15, 13,625; June 16 to 30, 9,752; July 1 to 15, 1,710; July 16 to 31, none; August 1 to 31, none.

HIS LORDSHIP.—That is the whole amount, from the beginning to August? Yes. The total is 288,174 gals.

MR. GALT.—Can you say what amount of spirits was sold up to Sept. 1, 1864? I cannot.

We had it in Mr. Brunel's evidence that the amount of sales as agreed to by Borst, at Maitland, was 217,132 gals. With regard to the spirits consigned to yourself, was that made at Borst, Halladay & Co.'s distillery? I received and sold it as such.

How does it happen that it does not appear on the stock-book?

HON. MR. CAMERON.—It does appear, when it was sold.

WITNESS—I did not pretend to say that I entered all that was consigned to me.

MR. GALT (in reply to opposite counsel) explained. He said: I take the stock-book and say, as regards spirits removed by any other mode of conveyance than the Grand Trunk, I presumed it was correct. Then I say I do not care to whom you sold the spirit—the quantity I claim against you is the quantity I have proved in puncheons. I claim that you disposed of such a quantity of spirits; and say that, according to your stock-book, the whole amount you had a right to dispose of was so much. From that we will deduct the amount you yourselves say was sent to places other than Montreal or Quebec. And then I say we have shown that you sent to Montreal alone upwards of 200,000 gals. more than appears from your returns. I say I will give you credit for every gallon you disposed of. You say in your stock-book that you disposed of so much to parties in Toronto

and elsewhere. I give you credit for all that ; and still say I have proved that you have sent over the Grand Trunk, from Maitland to Montreal, such a quantity of spirits that it exceeded by upwards of 200,000 gals. the whole amount you say you had to dispose of.

Hon. Mr. CAMERON.—We reply that “disposed of” means sold, and that if we sent out 100 gallons or puncheons, or any other quantity warehoused in Montreal, there was no necessity whatever to enter one gallon until we had sold it.

HIS LORDSHIP—(to Mr. Cameron)—They answer that you had none on hand.

Mr. GALT.—Yes ; I asked Arnold this ; and he replied he could not say they had any stock of spirits on hand on July 1, 1865.

WITNESS.—I was thinking of 1864. I think there was a little on hand on July 1, 1865.

Mr. GALT.—Do you think there were 20,000 gals. ? I do not.

Hon. Mr. CAMERON.—The delivery was proved of a great deal more than that in one parcel on the 10th August.

Mr. GALT.—Never mind. (To witness)—With regard to these spirits sent to you, were they entered at the time in the stock-book ? No.

Were those spirits that appear to have been consigned to J. Holiday & Bro., entered ? Not when they were consigned.

Were the spirits sent to you to Quebec entered in the stock-book ? Not in my name. When they were sold, the name of the purchaser is given.

Does this stock-book contain the entries of all the spirits that were sold ? No, it does not,—of all that was sold in Montreal.

Look carefully at it, and tell us how much you believe was sold in Montreal altogether, through your agency ? Perhaps in the neighbourhood of 400,000 gals.

Have the kindness to look at this abstract of the entries in the stock-book and check it with me. Yes.

The following are the quantities sent by conveyance other than the Grand Trunk, in proof gallons :—65, 67, 120, 34, 40, 154, 35, 196, 33, 41, 200, 40, 192, 342, 366, 40, 40, 34, 79, 70, 180, 200, 36, 166, 436, 159, 67, 199, 373, 165, 373, 80, 151, 200, 82, 80, 67, 36, 75, 161, 522, 27, 75, 26, 637, 80, 378, 98, 80, 66, 65, 153, 63, 285, 66, 908, 66, 75, 40, 400, 361, 670, 471, 248, 376, 233, 225, 45, 1234, 714, 319, 206, 121, 75, 167, 162, 72, 186, 34, 200, 158, 369, 80, 75, 12, 27, 19, 247. That is all shipped up to 31st Dec. Then take by the Grand Trunk :—1974, 1723, 196, 197, 397, 391, 398, 192, 225, 3721, 195, 1979, 3630, 1198, 9, 19, 349, 79, 40, 880, 80, 913, 1698, 897, 3733, 3747.

WITNESS.—3748.

Mr. GALT.—3748, 150, 3732, 1545, 3721, 3760, 200, 2465, 3697, 573, 3718, 3664, 526, 838, 150. Turn back and you will find 148, 179, 150, 75, 152, 150, 397, 75, 12. (Witness did so.) Now, you have checked all the entries for that half year ?—Yes.

Now look at the other—222, 98, 97, 32, 26, 40, 34, 603, 78, 225, 42, 150, 40, 223, 79, 34, 225, 2458, 138, 345, 39, 35, 295, 56, 32, 34, 110, 29, 226, 121, 168, 1015, 99, 229, 76, 40, 1822, 338, 244, 205, 102, 75, 38, 147, 39, 223, 156, 96, 34, 39, 75, 40, 1479, 198, 369, 98, 395, 272, 38, 39, 34, 332, 381, 169, 41, 32, 80, 35, 41, 85, 122, 222, 98, 39, 142, 223, 266, 35, 234, 279, 40, 78, 78, 39, 75, 147, 41, 8, 76, 84, 82, 34, 247, 483, 118, 165, 298, 223, 81, 404, 147, 398, 566, 16, 34, 100, 40, 197, 84, 81, 1881, 151, 40, 115, 40, 34, 75, 40, 82, 40, 40, 180, 41, 375, 334, 329, 150, 42, 82, 1340, 401, 204. Then by the Grand Trunk Railway—208, 907, 294, 75, 2583, 500, 728, 150, 377, 450, 18, 336, 3705, 3544, 3648, 3673, 3130, 3172, 76, 153, 3706, 3703, 747, 100, 1120, 885, 8875, 3703, 3673, 3667, 3679, 3685, 399, 3697, 7846, 1796, 3684, 3762, 3780, 3798, 3648, 3766, 3727, 78, 165, 3786, 64, 37, 83, 40, 42, 40, 33, 71, 992, 780, 39, 477, 2175, 3682, 1789, 1900, 7550, 916, 901, 906, 38, 6076, 1839, 1698, 39, 35, 4311, 82, 18584, 3729, 1767, 1147, 225, 2102, 3999, 4972.

Mr. GALT explained that he had been getting witness to check off as against the abstract, the quantity of spirits which appeared by the stock book to have been forwarded by the Grand Trunk, by drays and other means. (To witness.)—I understand you to say, speaking from memory, that you disposed of some 300,000 or 400,000—which would leave a very much larger surplus than 180,000 gals. unaccounted for.

Hon. Mr. CAMERON.—If that quantity has been sold; you must remember there was a quantity sold before Sept. 1, to Reid. There was a quantity in Halladay's store, and a large quantity sent from Toronto—making upwards of 200,000 gals. The first year there was 100,000 gals. sent from Toronto.

WITNESS.—Yes; we bought it from Gooderham.

Hon. Mr. CAMERON.—About 360 puncheons were sold to Reid before Sept. 1, and 221 puncheons on hand,—none of which came into the stock book at all.

WITNESS.—Yes.

Mr. GALT.—When did that come from Toronto?—In 1863.

You say there were frequent breakdowns; when did they take place?—was there a breakdown since Sept. 1864? Yes; could not say how many there were.

Is there any loss in rectifying the spirits? There is a small loss, about 3 per cent., it is said. I do not think it is over one per cent.

Mr. GALT.—The duty is payable before the spirits are rectified, and in the stock-book they put the loss at 3 per cent. There is therefore an addition of 3 per cent. to be put to the sales of rectified spirits for duty paid before it had been rectified.

Mr. BRUNEL was then called to prove the quantities agreed as to the sales book. (Examined by Mr. Galt.)

What amount of sales was agreed to between Mr. Borst and yourself, when you examined the sales book, while the investigation was going on in

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December, 1864? He was present when I made the abstract. He took the sales book and made up the quantity sold, apart from my computation altogether. He made it 217,132 proof gallons. This was on the 19th January, 1865, and had reference to the sales previous. The sales extended from the commencement of the distillery till September, 1864, and covered the period referred to in the abstract. He also stated at the same time the quantity of stock in every shape on hand, as 83,080 gallons—just as it was entered in the stock book. He also spoke of spirits brought down from Toronto.

Mr. M. C. CAMERON—Yet you are suing Halladay as responsible alone.

Mr. GALT—If you bring Borst here we will make him responsible too. (To witness). Did Mr. Borst make a statement about spirits being sold to Reid? No; I do not recollect seeing the name of Reid in the books, though I examined them to see what was sold.

If any quantity like 200 or 300 puncheons was sold, you would recollect it? Yes. In reference to large sales, such as these, I should remember the name.

Was any statement made as to any spirits being in store in the stables? No; I asked particularly had they any more on hand, and they led me to believe that was all.

Had they any object in showing a large quantity of spirits on hand then? Certainly; we were then engaged in making up the quantity they reported as having been manufactured and returned for duty. But they could not account for as much as the sales book showed they had sold. The latter showed about 25,000 gallons more had been sold than they had returned to Government. Their object would therefore have been to cover the difference between what their sales book showed and the returns—their object being to avoid payment to Government of the duty on that amount. They then admitted a deficiency in the corn account of 40,000 bushels.

If this spirit was there then, they had an interest in showing you it was there? Certainly.

You do not recollect seeing the name of Reid in their books? No; I should recollect it as being a large quantity.

Did you ever give instructions to Arnold with regard to the manner in which the entries in the stock-books should be made? Yes.

Did Arnold ever tell you he did not make entries in the spirit stock-book when spirits were removed and sold? He said it was the course they followed at the beginning. I told him it was not the proper way.

When was this conversation? I think it was in December, 1864.

Are you positive you told him then, that the course he had pursued before was not correct?—I did, and told him I understood that the statute required that the stock-book should contain the amount sold or transferred or removed from the distillery. I said that if they kept a distinct sales book from the stock-book, and recorded there the particulars of every

transaction, they might enter each day's transactions in the stock-book, making reference and seeing that it tallied with the other books.

Hon. Mr. CAMERON—That would not be the course required by the statute, according to your interpretation.

Court adjourned for an hour at this stage (2 o'clock, P.M.)

When Court resumed its sittings at three o'clock,

Hon. Mr. CAMERON rose to make objections on the part of the defence. Your lordship, he said, has already a note of some of the points I have raised in objection, and I need not repeat them. They have reference to the stock-book and the "regulations." I renew these objections as grounds of nonsuit. And I further object that under this statute, in the first place, the word "stock" does not include whiskey—that whiskey distilled is not included in the term. Under the English law, the word "stock," or "stock-in-trade," is made use of with the interpretation clause. The meaning placed on the statute is, that it includes what the material is, as well as what it is made from. But, according to our statute, the whiskey, or what is made from the material, is different from the material itself. This appears from the 34th and 36th sec., which show the interpretation of the statute itself, that stock is there described. Everything else is described as articles or commodities. And when they came to the question of the stock-book, we say it cannot include that article which is not provided for in the statute. I contend, again, that that there is nothing whatever in the statute in reference to the words "otherwise disposed of," except with regard to articles of grain or other materials from which whisky is made, except in the 34th sec., which provides as follows:—"Every person or party licensed as a distiller or as a brewer, shall keep a book or books in a form to be furnished, from time to time, by the Minister of Finance, and to be open at all seasonable hours to the inspection of the Collector of Inland Revenue, or other proper officer of excise, wherein such distiller or brewer shall enter, from day to day, the quantities of grain or other vegetable production, or other substance put by him into the mash tub, or otherwise used by him for the purpose of producing beer or wash, or consumed by him in any way for the purpose of producing spirits, or otherwise disposed of,—and also the quantity of spirits, beer or other malt liquor by him distilled, manufactured or made; and for any wilful false entry or any wilful neglect to make any entry hereby required, the distiller or brewer shall incur a penalty of \$500." The words "otherwise disposed of," we contend are, then, applicable to grain and not to spirits; and while regulations may be made under the statute, no regulations can be made which will go beyond the statute. You cannot require the distiller to do anything which the statute does not provide for. It does not provide for what is claimed in this instance by the prosecution. Again, according to the words "otherwise disposed of," no return, we contend, is to be made unless absolutely sold. The words mean—so as to be out of the power of the person manufacturing; and the mere fact of the spirits being out of the distillery and in

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the warehouse, or other house, is not "disposed of;" and such spirit need not, therefore, be returned as "disposed of" until sold or properly parted with; and spirits not brought into the distillery are not returnable. Again, the authority given here to prosecute for penalties we find contained in the 109th section. Now, that section declares, that "every person carrying on any business subject to excise who shall fail or neglect to keep such stock-books and all such other books as may be required to be kept by any regulations, approved by the Governor in Council, or by this act; or, to make true and correct entries therein of all particulars required by this act, or the said regulations to be entered in such stock-books;" or, who shall neglect or refuse to make such statements, or render such accounts as are required by the act, shall forfeit and pay the penalty attached. My learned friends, I say, failed altogether in the evidence required for prosecution under this act; for they have not shown that the stock-book or stock-books were kept according to the regulations of the Governor in Council. By this act, indeed, there are no stock-books. There are, we say, two things necessary with regard to these stock-books—that the Minister of Finance is required to determine the regulations under which they should be issued, and to approve of them; and neither of these steps were taken. The information in evidence produced, could be laid, we say, only for not returning a just and true account, under the 62nd sec. of the act; and there being no stock-books under either the proper regulations of the Minister of Finance or of the Governor in Council, under which the penalty is laid, it could not be incurred.

Mr. GALT—In answer, I would beg to call attention to the books required by the 34th clause, and it will be apparent they are not stock books at all. The law says:—"Every person or party licensed as a distiller or as a brewer, shall keep a book or books in a form to be furnished from time to time by the Minister of Finance, and to be open at all seasonable hours to the Inspection of the Collector of Inland Revenue, or other proper officers of Excise, wherein such distiller or brewer shall enter from day to day the quantities of grain or other vegetable production, or other substance, put by him into the mash-tub, or otherwise used by him for the purpose of producing beer or wash, or consumed by him in any way for the purpose of producing spirits, or otherwise disposed of,—and also the quantity of spirits, beer, or other malt liquor by him distilled, manufactured or made; and for any wilful false entry, or any wilful neglect to make any entry hereby required, the distiller or brewer shall incur a penalty of \$500." Those are a different set of books altogether from the stock-books, and are what are called "register-books." The 35th clause, which refers to stock-books, says,—“Every distiller, brewer and tobacco manufacturer who is required to take out a license under this act, or who carries on any business subject to Excise, shall, further, keep such stock-books and other books, and in such form and manner as may be ordered and prescribed by regulations approved by the Minister of Finance.” For the purposes of this trial, we now hold that this stock-book has been approved of by the Minister of Finance. This

is the first time the term "stock-book" is used ; and we affirm that these are not the books referred to in the 34th sec. Then, the 36th sec., on which my learned friend relies, says—"Every quantity of grain recorded or stated in the stock-books herein mentioned and in all returns, descriptions and statements required to be kept or made by this act, and the quantity of every other article or commodity, except fluids, used in or about premises subject to excise, or entering in the manufacture of any article or commodity subject to excise, shall be stated in pounds avoirdupois. All quantities of fluids shall be stated in the aforesaid books, returns, statements and descriptions in wine gallons." It is not necessary to trouble your Lordship further than to call attention to the facts—first, that stock-books are not referred to in the 34th sec. at all. They are referred to in the 35th, and there it states that in those books all fluids are to be entered, according to their quantity, in wine gallons. With regard to the 109th sec., "every person who shall fail or neglect to keep," &c., the meaning of it was clear—that so soon as the Governor-in-Council thought necessary, distillers should be required to keep all such other books as they might be required to keep. But no such books ever issued,—that is as might be required by the Governor-in-Council and this act. It refers, you will see, to three classes of books. First—stock-books ; 2nd, any other books required to be kept by any regulations of the Governor-in-Council and this act—and here they had reference to the books referred to in the 34th sec.

HIS LORDSHIP, in the meantime over-ruled the objections, and defendant's leave to move in the higher Courts was reserved.

Mr. M. C. CAMERON then addressed the jury for the defence. On behalf of defendant, he said, it becomes my duty to make a few observations. But I shall not occupy your time long for after the evidence I will be followed by my learned friend, Hon. Mr. Cameron, who will go more fully into the matter. I understand the Crown does not intend to raise any objection to my learned friend.

HIS LORDSHIP.—I rather think I have something to say in that matter. Beyond what you do in the opening now, you have no right to go.

Mr. M. C. CAMERON.—We would only have the right to sum up ; not to make any observations.

Mr. HARRISEN.—You have no right to sum up at all.

HIS LORDSHIP.—I understand them to concede that the same mode of procedure should be adopted as if it were a case under the Common Law Procedure Act.

Mr. M. C. CAMERON resumed. The case, he said, as presented by the Crown, has two aspects. They seek on two grounds to recover from this defendant the large sums mentioned—\$200 as a penalty, \$500 as a further penalty, and three times the ordinary duty paid on such liquor made and disposed of as they see not entered in the stock-book. The first charge is, that more liquor was distilled by this defendant than he has given returns for ; and they say that in consequence of his neglect to make proper re-

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turns, the penalty has attached of the sum stated by the statute, and three times the ordinary duty paid on the liquor. That is, instead of 30c. per gallon they claim 90c. Now, in reference to that particular charge, I apprehend, if you have been paying attention to the case—as I have no doubt you have done—you would have noticed that there was an officer of customs whose particular province it was to look after this distillery—to test the liquor—ascertain its strength—and measure the quantity made by them—and you will consider it remarkable that he has not been brought before you in order to speak to what he found to be the state of affairs in their distillery from day to day. In this case the Crown prosecutes the claim against a subject, who is charged with serious and grave offences apart from this ; for he was accused of having committed perjury. It was said to be essential to this crime—and it was said that almost every crime known in the criminal calendar had been committed by Halladay ; and it was even insinuated that he had attempted to commit murder. Now where charges of that kind had been made, one would have supposed that the gentleman specially charged with the inspection and examination of the distillery, would have been called before you to show if he had any reason to suspect or believe that these frauds had been committed by defendant, and that his returns were not faithfully made. The first count, I say, charges that he manufactured a larger quantity than he returned. Now, as far as the revenue is concerned, it is clear that if they have not manufactured it, it does not matter how much we disposed of. If we did not manufacture it, some one else did, and paid the duty. It, therefore, becomes important that we should inquire whether more has been manufactured than would appear from the return. It is important. And if, after hearing all the evidence for the defence, taken in connection with that offered by the Crown, you come to the conclusion that more has not been manufactured than returned, I apprehend you will pay very little attention to the other part of the information. Now we propose to do what the Crown has omitted to do. This is the stock-book kept in the establishment—the stock-book of which returns were made to Government. Every two weeks these returns had to be made to Mr. Wilson, the Collector of Inland Revenue, who resided at Brockville, and who went to this Maitland Distillery almost every day to make examinations of what was going on. If any of you, gentlemen, are familiar with the business of distilling, you must know that it takes more than four days to manufacture the grain into spirit, liable to duty. You have heard the Government precautions against fraud in these distilleries, among which I may now mention that everything connected with the vessels in the distillery that can be found so as to extract liquor from these vessels before it has been measured, and is chargeable with duty, is locked, and the key is kept in possession of the Custom House Officer. You are to remember also that that lock is so made that it cannot be tampered with, without discovery by the excise officer. In the casing of this lock a piece of paper is placed, on which are written the initials of the

Custom House Officer. This is placed right opposite the key hole. The lock is then shut down, and it is not possible to get it open without perforating the paper, and showing the officer at once that the lock had been tampered with. Of course, if a forgery were committed in reference to the piece of paper, it could be easily detected by the Customs officer—who would see that his initials were not on the piece of paper. It was thus impossible to take liquor from the receiver through the ordinary cock or pump; and if liquor was extracted, as charged, it must have been by some other process. Now you will understand, as a matter of fact, that the law requires all vessels containing the liquor should be painted of a particular colour, so that no tampering with the hoops could take place—no one could move them the slightest particle; and nothing of an attempt of that kind had been discovered in this case. It was not pretended on the part of the Crown that they had, up to this moment, discovered the means by which the alleged frauds had been committed. They gave no evidence to lead to this conclusion; and the only circumstance that we hear of now is the fact that one of the man-holes in the receiver—some time after the distillery had been in possession of the Government, and this defendant had nothing to do with it—when he was even denied access to it, except in presence of Crown officers—one of these man-holes became warped in such a way as to allow of a syphon being inserted to draw off the liquor. Under these circumstances, gentlemen, it appears to me that we have not heard one solitary thing to determine whether any fraud had been committed; and we say distinctly that no fraud has been committed—that this defendant has always conducted his distillery fairly; and, further, that even if he designed a fraud, it was not in his power to commit one. The fact that the air-pipe was broken, might be an evidence that liquor could have been taken away improperly. But we will show that no quantity of liquor worth speaking of could have been abstracted in this way: for the breakage was repaired in a day or so. The quantity of liquor which could have been drawn off in the meantime must have been small indeed when the instrument used was only seven-eighths of an inch in diameter; and during the 24 hours, but 5 at the utmost could be consumed in running off the liquor. It will be for you, gentlemen, to say what quantity of liquor could be run out during the time this portion of the work was out of repair. That was in December, and for that month you will find that the returns made to the Government were larger than for any other month before or after. So, you will see that at that time, at all events, no fraud had been committed on the part of Halladay. I may here remark that I understand Mr. Wilson has been suspended from his position of Inspector of Inland Revenue; but the Crown has not brought him before you, although, surely, he would have been a judge as to whether these alleged misrepresentations were made or not. They have not given that gentleman an opportunity to come forward and say whether or not he was guilty of complicity in the fraud here charged. No; they endeavour

to damage this defendant's case by excluding that witness. They leave him out, they say, because the frauds had taken place, and in some way or other he must have been cognizant of them, or have grossly neglected his duty. But this, gentlemen, is the merest suspicion. Now you will, perhaps, understand that it is only necessary to get up a suspicion against anybody or anything, and that it takes very little indeed to feed it and lead to the belief that it is a certainty. The Crown has chosen to say in this case that they cannot prove as an absolute fact that this liquor was distilled in greater quantities than returned. But, they say, we are going to show certain suspicious circumstances—we are going to show that the station-master has been tampered with—that he has committed great frauds and left the country. This, gentlemen, is merely an insinuation. They do not prove it. They add that certain papers have disappeared, and infer that they must have been abstracted. But, gentlemen, it is not suspected that anything has been wrong at Montreal, though papers have been lost there as well, where it is not pretended Halladay tampered with any one. But it suits them to throw suspicion around the Maitland papers, in order that you may gather that wrong has been committed in this case. They charge us also with sending more spirits to Quebec and Montreal than we have accounted for; and this they endeavour to make out by calling before you a great number of persons making purchases of spirits sent to these places. They call the officers of the Grand Trunk Railway to show the number of puncheons passing over that road consigned to Mr. Arnold, or some one in Montreal, on account of Halladay. They charge against us all the sales made in these places, and do not take into account what we had on hand before the 1st of September, when we were not bound to keep a stock-book; nor do they make allowance for the quantity we had in Montreal, which has been proved by Arnold and Kyle. They merely give general evidence of sales here and there; and in the confusion arising from sifting the charging of the same items two, three, and four times, they say we find evidence here of larger quantities than you returned. I shall not, gentlemen, take up your time by making any lengthened observations to you; but shall content myself with saying—there is our book of the quantities manufactured. It was examined almost every day by the Inspector of Inland Revenue, Mr. Wilson; and here are Mr. Halladay's returns verified on oath, representing the correctness of the quantities. Oh, but, my learned friend says, he has not signed it; and, therefore, it is a fraud. Against such an assumption you will place the fact that a close personal supervision of the affairs of the distillery was made by the proper officer, who came there almost daily to make examinations. Beginning at the 1st of October, you will see the returns show 6,000 lbs. of grain,—here are the number of wine gallons, and of proof, and then the initials of the Inspector, "W. H. W." And here and there you will find the same initials. Here are four days running, on which, according to this book, he officially visited the distillery. What opportunity, then, had this defendant of doing wrong. When he was

kept under such a close surveillance, what opportunities had he for taking liquor out of the close receiver, unless you can suppose that the Inspector and Halladay were in complicity—unless you can suppose that the officer of the Government was aiding in the frauds? If he were, of course there would be the opportunity, as his going there would be a mere ceremony; and on these grounds, I think, gentlemen, it would have been far more satisfactory if this officer had been called before you. You will understand, too, that though Mr. Brunel has disclaimed any pecuniary interest in the result of this suit; yet, as the law was at the time this transaction took place, he would be entitled to half the amount recovered, if the case were made out in its entirety, and a verdict were rendered against defendant. Here again (looking at the book) I find the Inspector had visited the distillery. I find his initials, "W. H. W." The man hole was opened, and the quantity tested by the gauge outside. He went there to see the strength of the liquor, compute the number of gallons, and then we have the quantity put down in the return, and Mr. Wilson's certificate as to its correctness. From the 1st of September, 1864, to the 1st July, 1865, when the seizure took place, this is the way proceedings went on. Now, I say, that when frauds of such a description are charged, and penalties like these asked, I am sure you will agree with me that the evidence on which the charge is sought to be established, ought to be of the most clear and satisfactory character. It should not be of a kind open to suspicion. You should have had brought before you a person engaged in the distillery constantly, to speak as to whether or not anything of the kind which is charged could have been done. You should have the proper Revenue Officer called before you; and I will be bound to say—though I have had no communication with him, and we have not had a solitary word of conversation with him on the subject of this charge at all, lest it might be said that there had been any attempt on our part to induce him to give testimony in our favour—I will be bound to say when he is placed in the box his evidence will show you that it is quite impossible the Crown could have been defrauded. It is not necessary, I presume, to make any observation on the position which Mr. Wilson occupied. He had been selected to fill a position of trust, and it was clear he was then considered a respectable man. And I would now ask, what solitary thing had occurred since he had received that appointment to show that his character was not truthful and trustworthy. It will not do to suspect him merely because others from motives of interest and gain, feel it necessary to impute the worst of motives to him and to this defendant in this action. In neither case, gentlemen, can their mere miserable suspicions be allowed to blacken and destroy the characters of men, whom they have not been able to assail in any other way.

For the Defence the first witness was

Mr. D. WILSON, who was called and examined by Mr. Richards :—

Were you mate of the "Shook"?—Yes; and I recollect arriving in

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Maitland some time in July, 1865, with a cargo. I weighed out part of that cargo.

Up to what time?—Noon: this is my "tally" now shown me.

How much did you weigh up to that time?—11,704 bushels of 56 lbs. to the bushel.

Was it bought in Chicago?—Yes.

How was the corn measured?—It was put into a hopper on the scale and weighed, and that was the quantity. When the corn was put in at Chicago, it was steam-dried.

Mr. GALT—Were you the only mate?—No; there was another one.

Did Halladay complain that the cargo of the "Shook" was not full?—I did not wait.

Mr. LOURY examined by Mr. Richards:—

Were you employed to weigh out the cargo of the "Shook" after Mr. Wilson left?—Yes; I commenced at one o'clock. I commenced where he left off: for the horses were taken off at twelve.

What did the balance of the cargo weigh?—3,968 bushels at 56 lbs. to the bushel.

Was there a large stock of cattle at the distillery? Yes.

Did those persons who fattened the cattle have free access to the grain? They often got it when they wanted it.

Mr. GALT.—Have you any idea of the quantity of grain taken for such a purpose? I have not.

MARTIN O'DONOHUE, examined by Mr. RICHARDS.

Where did you live? At Maitland. Was in Halladay's employment since the distillery started.

What is your business? Rectifier.

Where does your duty commence? When Mr. Wilson unlocks the taps, I take the spirit and pump it upstairs to the rectifying apparatus.

Is it your duty to take check of the liquor from the time it leaves the rectifier till it is fit for barrelling? Yes.

When it is pumped up stairs is the liquor reduced? Yes; it is put down to about 32 under proof, and then it is put through the rectifier. We cannot as well rectify it unless we reduce it. The liquor is all reduced to 32 below proof, and afterwards it can be run up as high as 65.

Was all the liquor put up to 65? No.

It is put up to different strengths? Yes.

Is a great deal of it left at 30? Yes; we send off very little higher than 50.

Have you frequently examined the receivers? Yes, when Wilson, the revenue officer, has been there. There are two receivers in the distillery. Over each of the man-holes there is a trap-door to enable us to get down to them.

How is the test conducted? The vessel is first unlocked; the liquor is

then shaken up. I am there pretty nearly all the time. I generally stir it up with what is called a "plunger," and he tests it.

Have you ever known this man-hole not to fit down while testing was going on? No. At the last time when it was opened to get water in, we noticed a warp—we could not get one of the lids to fit down. That was the last time I tested it. I never saw it in such a condition that liquor might be got out of it. I do not know that one could put their hand in there now.

Did you ever hear of liquor being taken out of the receiver otherwise than through the pump? No: it is my duty to have the liquor taken out.

Except through the cocks, you never knew or heard of liquor being taken out of the receiver? No. I am quite sure I would know if any had been taken out otherwise. Mr. Wilson unlocked them, and after that I can pump out at any time.

Did you ever take liquor from either receivers till Mr. Wilson had tested it and opened the tap? No.

Do you know anything of the pipe broken at the side of the safe? Yes; I mind of the pipe being broken off there once. Mr. Wilson came and said it must be put on right away. I found it could not be put on till the worm was washed out, and in two or three days after it was done.

During that time was any whiskey got out? I never saw any. I never took any out.

Has ever any liquor gone from the place that has not paid duty? Not to my knowledge; and if any went I would be likely to know.

On the occasions when Wilson tested were you always present? Nearly always.

You recollect when the distillery stopped in 1865,—did you then fill those receivers with water? Yes; after Brunel seized it.

Did you observe whether one became warped since or not? Not till the time Wilson and I were there, when they were locked up after the water was put in. We got up steam one day when the receivers were empty, and then we first discovered the warping.

Used Mr. Wilson to come there without notice? He came at all hours of the day. I never knew him to make any particular appointment to come.

Did you know of a quantity of liquor being piled up in the sheds or not? Yes: it was in four sheds.

When was that? They commenced putting in there before the 1st of June, and it was all in before the 1st of August.

Mr. GALT.—Did you keep account of the spirits that left the distillery? No.

How do you know that all the duty was paid? I got access to it afterwards.

You do not know, in fact, anything about the quantity of spirits at all? No.

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Mr. RICHARDS.—You know it was all measured by Mr. Wilson? Yes. Were the tubs ever filled higher than the gauge? I never saw them filled higher.

Mr. W. H. WILSON, examined by Mr. M. C. CAMERON.—Are you Inspector of Inland Revenue? I held that office: Am now under suspension.

During what time? I think my term commenced in Oct. 1, 1863, and continued up to August 17, 1865.

During the time you were Inspector, did you attend at the distillery of the defendant at Maitland? I did: it was my intention to go there daily, but some days I did not go. I went there to attend to the duties of my office: some days to test the liquor; on other days to exercise a general supervision, which I was bound to do. Many days Halladay wanted me to test the liquor almost every day. I went also to look around and discover if anything was wrong.

To see, in fact, that a return was made of all the liquor manufactured?—Yes: I always went to the mashing room there to see if the entries in the mash-book were correct. The initials in the mash book handed me are mine.

Mr. GALT.—That is the book kept under the 34th sec.

Mr. CAMERON.—This book shows the quantity on which duty is paid. It contains an account of the quantity and description of grain, the quantity of liquor made, the strength o. p., and the quantity of proof. (To witness)—I see it frequently noted here that the distillery was not working—that something was wrong with the machinery?—Yes.

I find a shaft was broken on November 2, when the mill seemed to have stopped till the 9th—is that correct?—Yes.

On November 1, when you went there, I see the amount is represented as 660 gallons proof. Your initials are to it. Next day when you visited, the shaft was broken?—Yes.

Did you receive returns from Halladay every two weeks?—Yes.

Did they correspond with this book?—Yes.

Did that return contain the quantity of spirits produced on each day, and the quantity of each kind of grain used during the half month?—Yes.

Who checked the mashing, for example, when you were away?—They entered it themselves in their own stock-book.

So that if you were away one day and came back the next, you could ascertain what had been done?—I could satisfy my mind on the point.

You seem to have attended almost every day, if the initials indicate correctly?—They do.

I suppose, during the time you were there, you had heard some suspicion that something was wrong?—Yes.

Did that make you diligent in your enquiries?—It had a tendency to do that.



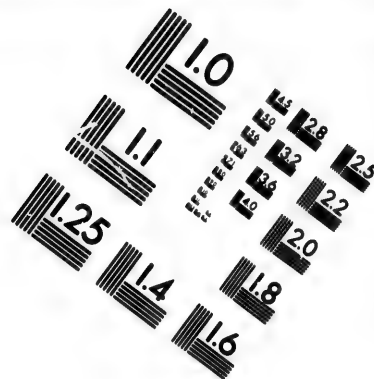
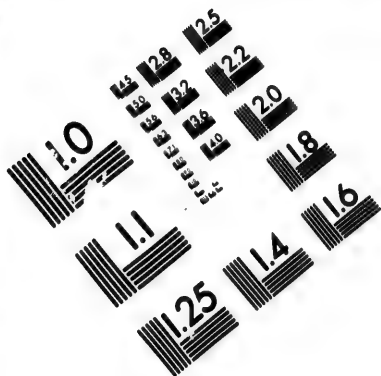
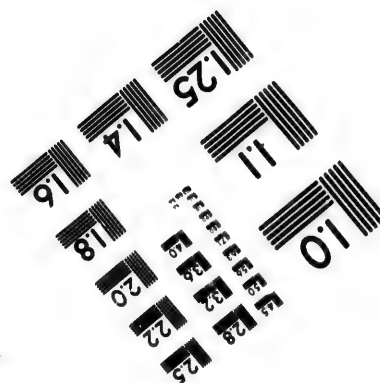
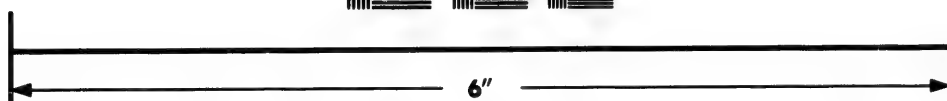
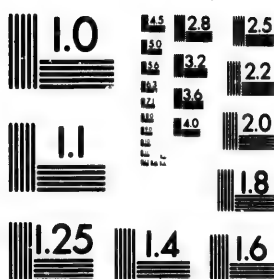


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Did you ever discover anything wrong ?—No.

Do you recollect the air pipe being broken ?—Yes.

How long was it off ?—It must have been two days. On the third I had it repaired. I do not think while the taps were in proper condition the spirits would run out. Government furnished me with an instrument for sealing, by compressing which it was impossible to get the seal off without breaking it. The seal is a plain round piece of lead. Independently of that, I sealed it, I think, with my own seal. The seal was put on the tub, and liquor could not then be removed without my being aware of it. When locked a bar was put through them which would render it impossible to turn them. I put my initials besides on a piece of paper in the lock produced. I would recognise if the lock had been tampered with at once. Never in my life did I find the lock tampered with.

Did you ever allow your keys to go out of your possession ?—No ! no man ever got my testing keys, to my knowledge.

Did you ever discover any secret pipes there at any time ?—No.

How do you test the strength of the liquor ?—I generally took Martin O'Donohoe with me ; the man-hole was unlocked ; he would take his plunger and stir it up and then take up a small quantity to test.

You tested it by what ?—Sykes' hydrometer.

Were you at the place at any time with Mr. Brunel ? I was always there pretty much when he was there.

Was he able to suggest any way by which the wrong could be done ?—No ; except in that pipe.

Do you know whether Mr. Brunel has a practical knowledge of distilling at all ? I am not aware of it.

I suppose you have certain rules in the department by which you do all that is material ? Yes.

Did you ever examine the top of the receiver, at the man-hole, to see was it possible to get anything out of the top ? They could not get it out unless they unlocked it, and they never did unlock it that I am aware of. They could not unlock it without my knowing it.

Did these parties seem to intend to make correct returns ? I suppose they did.

How often did you test the strength and quantity of the spirit ? That book will show ; sometimes once a day and sometimes once in three or four days.

And you say that while you were absent it was not possible to get at the liquors in any shape or way, as they were locked and you always had the keys ? Yes ; until it had been tested and measured, and then they had a right by law to take it.

Was there any other cause for discharging you than the frauds charged here ? None that I know of ; and my impression is that everything connected with the distilling was straightforward and honest, and it could not be otherwise without my knowing.

Mr. M. C. CAMERON.—The quantity returned was 288,000 gals. 1863, and according to the book, 281,000,—was it possible that that distillery could have turned out 200,000, 300,000, or 400,000 gals. more than that? I do not think it possible for the distillery to do anything more than the returns showed.

On the 6th and 7th July, I see the working of the distillery was stopped by order of the collector. That was while some diagrams were being prepared before I gave the license.

I find you were there on the 6th, 7th and 31st March, while they were repairing the boiler; and also, on March 16th repairs were going on while you were there. On March 2 the water-pump was broken; on the 3rd, ditto. You were not there on the 2nd, but on the 3rd and 1st; then I find that from the 9th to the 13th January, the main shaft was broken. You were there every one of these times? Every day on which my initials appear.

You were able to discover nothing wrong in all your surveillance of these premises? I discovered nothing, nor was anything wrong pointed out to me.

Were you present at the investigations in December, 1864? Yes.

Do you recollect Borst or Halladay giving an account of how much spirits had been made? I think they gave Brunel an account of it. I do not think that they said anything about 300 or 400 puncheons stored away in the stable.

Were they not then accused of having brought into the distillery large quantities of grain without being able to account for it? Mr. Brunel told me he had heard of large frauds in the distillery; and I said I would be happy to assist in finding them out, but I had never heard anything about frauds before.

Mr. GALT.—Between Sept. 1, 1864, and July 1, 1865, 3,100 puncheons were proved to have been sent over the Grand Trunk. Could they have sent that quantity over the road from Maitland? If it were sent, I knew or suspected nothing of it.

Multiply 2,726 puncheons—the number that went to Montreal—by 174; the number of gallons in a puncheon. I make it 474,324 gallons.

If that quantity of spirits was sent from the Maitland distillery to Montreal, it is more than you know of. From September 1 to July 1 your returns show about 281,000. It must have been sent without my knowledge; and if my returns show it has not been manufactured there, it could not be.

Hon. Mr. CAMERON—Could that quantity have been manufactured there, in that time, without your knowledge? It could not; not in excess of what I have returned.

Mr. GALT—Did you ever have a discussion with Jones with respect to the quantity of corn brought in? Yes; Jones asked me one day, if I knew how much corn Halladay returned. I said no; and he gave me the figures. I turned to my book and saw that spirits had not been manufactured to that

extent. I then went to Halladay, and he said he had sold and fed, and had still a large quantity of corn on hand.

Was there anything that took place between Jones and you that would justify Halladay in asking Jones if he intended to ruin him? No; as soon as I was told I had to go to Halladay.

What did you do then to verify Halladay's statement as to what was done with the grain? I satisfied myself as far as I could.

What did you do; did you examine his stock-book? I do not think at that time he had any stock-book.

Oh, no. You resided at Brockville, nearly five miles from Maitland? Yes; I generally drove down to Maitland and back. Sometimes I remained there half an hour, sometimes an hour, and sometimes the balance of the day.

With regard to these locks, were they ever applied to the close receiver—were the close receivers ever closed with locks similar to that one shown to-day? Not with that kind; but another kind.

The man-hole was not secured by locks of the description shown? No.

How often have the locks been changed since the distillery has been running? do you change locks by order of the department? The order of the department is to change every three or six months. I changed Mr. Merrill's locks, of Prescott, and then gave him a new set from Brunel, and put Merrill's locks on Halladay's.

When did you first receive the locks in which you put the paper? was it not in December, 1864? I could not say.

Do you recollect on one occasion, when absent, telegraphing to Chisholm to call and get your keys? No; I never authorized him to get my keys or any man living.

If he got your keys it was without your knowledge? Yes.

You keep a desk in part of Mr. Jones' office, and if Chisholm came to your office with a statement that he was authorized to get the keys, he had no right to do so? No.

Where do you keep the distillery keys? Sometimes in my own possession; sometimes in my desk.

Did you ever authorize Chisholm to call on Jones for the keys of your office? I swear positively I never did.

And if he got your keys he did so without your knowledge? Yes. And suppose any person says I did give the keys, how could he unlock the receivers without my knowledge.

Hon. Mr. CAMERON—Have you been in any way whatever, in collusion with Halladay or Borst & Halladay, to enable them to pass out of the distillery spirits on which the duty has not been paid?—No.

As far as your knowledge of your duty went, you have performed it strictly?—I have.

You state that distinctly?—Yes; and if any quantities of whiskies went on the Grand Trunk to Montreal, they were not, to my belief, made at the

Maitland Distillery. So far as that is concerned, the books show all that I know of the quantities manufactured.

Mr. GALT—I am prepared to prove by Mr. Jones, that the last witness did send a message to allow his keys to be taken by Chisholm.

Hon. Mr. CAMERON—I have a right to object. It is collateral to the issue and you cannot call anybody to contradict Wilson.

His LORDSHIP.—I think he may : it is charged that in some way not known, defendant obtained great quantities of liquor.

Hon. Mr. CAMERON.—I object, clearly. That is part of his original case.

Mr. GALT.—I am willing to run the risk of tendering the evidence.

His LORDSHIP.—It is objected that this is part of your original case.

Mr. GALT.—In answer, I would say that I did not in my original case, undertake in any way to show how these frauds were committed. I simply said they had been committed. I asked the witness just now—Did you ever part with your keys? Did you ever authorise Mr. Chisholm, agent of Borst, Halladay & Co., to get your keys? And he replies—I never did. If he got the keys it was without my sanction certainly. Now, I want to show that the keys were got, and it was with his sanction.

His LORDSHIP.—I understand Mr. Cameron to object that it is not open to you now to show this.

Mr. GALT.—It was no part of my case. It is nothing to me how they committed the frauds. All I have to do is to show that frauds have been committed.

His LORDSHIP.—You said : I intend to show that he had stuff enough to make the whiskey sent over the Grand Trunk—that he had the opportunity of making it. Now I think an opportunity would be, having the key or duplicate of it.

Mr. GALT.—I said the liquor was distilled where there was every opportunity of carrying on the business honestly or dishonestly, being situated on the St. Lawrence, and having a railway station within half a mile of it. These last statements came out on cross-examination. I started by saying that certain frauds had been committed ; but never undertook to prove the *modus operandi* ; I did not make that part of my original case ; and hence I claim to be entitled to call this evidence now.

Mr. ANDERSON.—It is clearly evidence in this way. They endeavour to make out their case by putting a witness in the box to show that it was impossible the liquor could have been got, because that witness will say my keys never went out of my possession. We say we will show they did get out of his possession.

Mr. M. C. CAMERON.—With his consent ?

Mr. ANDERSON.—No.

His LORDSHIP.—That will do. I will make a note of the point.

Hon. Mr. CAMERON.—That is our case. Chisholm's application of them

would not be material unless sanctioned by Halladay, and there is no presumption of it.

HIS LORDSHIP.—I think Mr. Anderson put the matter on the right footing. I will allow Jones to be called. If Halladay's book-keeper got them, it does connect the principal with them.

Mr. JONES recalled, and examined by Mr. GALT :—

Did Mr. Wilson, the Collector of Inland Revenue, occupy part of your office at Maitland? Yes, he could get no other.

Do you recollect Mr. Chisholm ever calling at your office, and making any statement respecting Wilson to you? Yes; about a year ago, I think, Chisholm came in. Wilson had been away, and he said—Wilson has telegraphed to me to get his keys. I said—Very well; there they hang, at his desk; and he took the bunch of keys and went out to Halladay's office.

Mr. M. C. CAMERON.—You think this was about a year ago? It might not have been so much; it might have been more.

Do you recollect the time of day? I think it was in the afternoon. I think Wilson must have been there that morning, or the keys would not have been there. Chisholm used to come in sometimes and make entries.

Was the desk in the same room as you were? Yes; it was a desk six or seven feet long, slanting, the lid of which opened.

Was it kept locked? Always.

Were the keys in the desk? Yes, hanging on it, a bunch of them.

They could not be the keys of the distillery, for he said they were inside, if that was the bunch of keys hanging in the desk? I suppose so. Wilson spoke to me afterwards and said—Whenever I leave my keys again, I wish you would take them out.

You are a Collector of Customs. You did not suppose these keys had anything to do with the distillery or you would not have given them? I had nothing to do with his keys.

You had to do with them when you gave them up? I do not know whether they were the distillery keys or not. But I am pretty well convinced the distillery keys were in the desk. These keys hung there.

Did you send any memorandum to Mr. Galt to ask this question? No; I did not communicate with him.

Who did you tell it to? I do not think I need answer that question.

To whom did you tell this circumstance? I think I reported it first to Mr. Brunel about June last.

Then for 6 months you allowed that circumstance to pass unnoticed, though you heard all sorts of suspicions? My object in telling Wilson was to put Halladay in check of what I considered wrong at Maitland. I considered things were wrong.

You were not asked for the distillery keys? I was not asked for any keys after this took place. At one time he told me I had better take the keys out and take care of them.

Mr. W. H. WILSON recalled and examined by Hon. Mr. CAMERON :—

Do you recollect the transaction spoken of? Perfectly. I had returned from Maitland at the time, and was at Brockville.

Where were these keys? In my desk at Maitland.

Where were the distillery keys? In my pocket. It was my other keys I telegraphed for. My portmanteau keys and the keys of the desk were all together.

A JURYMAN—I thought you stated before that you never telegraphed about keys? About the distillery keys. I remember telling Mr. Jones also that if it occurred again he should take the keys out and put them in his pocket.

HIS LORDSHIP—Did I understand you to say that sometimes the distillery keys were locked in the desk? Yes; but on this occasion they were in my pocket.

Who gave you the keys? I got them at Maitland.

A JURYMAN—Why not get them at the Custom House office? Mr. Jones generally left early.

At this stage, 20 minutes to six o'clock, the Court adjourned till the following day.

FIFTH DAY'S PROCEEDINGS.

(BEFORE HON. JUSTICE JOHN WILSON.)

The Court opened at 10 o'clock, A. M., on Friday, January 12.

HON. JOHN HILYARD CAMERON, Q. C., addressed the Court for the defence. He said :—After the long time you, gentlemen, have been engaged in hearing this case, the mass of evidence and the endless details of figures and calculations laid before you, I do not know whether at this moment you are at all as familiar with its facts and figures, as it is quite clear you ought to be, in order to arrive at such a clear and correct view of the facts as will enable you to form a just idea as to the merits of the case. It is not of so much importance that we should be prepared with a statement concerning all those facts and figures which the Crown has gone into, and all those calculations which we never had an opportunity of checking till we came into Court, because in the position we take we claim that there has not been produced on the part of the Crown any evidence sufficient to convict us of a violation of the law. It will probably be necessary, in the course of my observations, that I should read to you more of the statute which applies in this case, and speak more about it than ordinary; for it is my desire to place before you a statement of the extraordinary powers which the Crown, under this Act of Parliament, is vested with, and the means they have of exercising those powers; and, when we have shown you this, and when you see how carefully the Legislature has fenced round

all the material liable to excise, you will see how it was almost impossible, unless in the event of collusion, that the frauds charged here could have been perpetrated. There is, probably, hardly anything under the law in which there is so much difficulty thrown in the way of a person having a desire to do wrong, as there is in the case of the person producing articles liable to excise duty. The advantages of the Crown under the statute are very decided. For example, if it is a question whether or not the duties are paid, the parties who claim they are, must show it. In fact whenever a question is raised between the Crown and the subject as to excise, there everything appears to be in favour of the Crown, and very little in favour of the accused party. Still, however, the prominent rule of law holds in a case of information for penalties, as in every other, that the Crown must not rely on anything in the shape of weakness on the side of the defendant, otherwise in the absence of proof on the part of defendant, the Crown must prevail. In this, as in every other case, it is incumbent that the proof on which the Crown relies must be distinctly and conclusively given; and if it is not, that the Crown is not entitled to recover; for the strongest possible reasons which I will adduce to you from the very words of the statute itself. In the first place there is, as has been alleged, "on every wine gallon of spirits of the strength of proof, by Sykes' hydrometer, and so in the proportion for any greater or less strength than the strength of proof, and for any less quantity than a gallon," a duty to be levied of 30 cents. If that be not paid, the penalty which attached, and which is sought to be recovered here beyond the \$200, amounts to three times the duty on the quantity which they say we neglected or failed to return, and which they put in the information at 200,000 gallons. The next clause sets out what form of application every distiller must make before a license will be granted. You will understand that the fact of the license existing is admitted, and this is what must be stated in the information. I tell it to you to show that from the first application for license down to the last moment there is placed in the power of the Government unheard of facilities for guarding their interests in excise. The statute says:—

"Every application for a license shall state the exact locality, in the City, Town, Village, Township, or local Municipality, as the case may be, where the premises are situated, in which the business for which the license is required is to be carried on, and shall contain or have annexed thereto—a full and particular description, in writing, with such diagrams or drawings as may be needed for fully understanding the same, of all the machinery, buildings, premises and places where such business is to be carried on, or where any of the materials or commodities used therein, or any of the products thereof, are or are to be stored or kept, and of the power by which the machinery so used is to be worked; and a description in detail of every separate room, cellar, vault, shed or other compartment thereof, specifying what use is to be made of each, and stating the designation which is to be placed over the entrance to each, in accordance with the provisions of this Act; and no one License shall authorize a person to keep or use a Still, or make wort or wash, low Wines or Spirits, or Brew Malt Liquor, or manufacture Tobacco in any other place than the house or premises mentioned in such License."

Now you see how extensive these precautions are ; everything is mentioned in the application for license—a description of the buildings, premises and machinery, with diagrams and drawings of the dimensions of everything connected with the distillery—all must be laid before Government in the outset. Then, in addition, there must be given—

“ The dimensions and capacity of every Still, Mash, Tub, Fermenting Tun, Cooler, Spirit Receiver, and of every other utensil, in inches and wine gallons, specifying in every case the purpose to which each is to be applied, and the locality or position in the building in which it is or is to be placed or used ; and also containing —

“ A particular description of every Pipe, Conduit, Trough, Hose, Valve, Pump, Cock, and of every means of connection or communication between the several vessels or utensils used in or about the Distillery or Brewery, with a description of such connections or joints.”

Now, at the outset you see, there must be a full description of the premises given—the very size of every room, and every particular as to machinery. All this must be specified clearly. Every minutiae of the business must be stated. Then notice the obligations which those who hold licenses have to come under :—

“ No Distiller, Brewer or Tobacco Manufacturer shall work his Distillery, Brewery, or Tobacco Manufactory at any time, unless he has given at least six days previous notice in writing to the Collector of Inland Revenue, of his intention to work the same at such time,—and such notice shall not extend to a longer period than thirty days from the delivery thereof to the Collector of Inland Revenue.”

Here, Government, after granting the license, takes care that by due notice of the time the works begin, they will be able to see that no fraud is practised on them, under the application for license on which the distilling process is to be carried on. Then, they are required to produce whenever asked,—

“ All books, papers and accounts kept in accordance with the requirements of this or any other Act, in which books or accounts such Officer may enter any memorandum, statement or account of quantities, and in such case he shall attest the same by his initials ;

“ All books, accounts, statements and returns whatsoever, and all partnership accounts used by any such person or by any copartners in carrying on any such licensed business, whether such books, memorandums, papers or accounts be considered private or otherwise ; and every such officer shall be permitted to take any extracts therefrom or any copies thereof.”

You will see that every book, paper or document, private or otherwise, is here subject to the scrutiny of the Officer of Customs whenever he chooses to demand them. They must be produced at any time, as often as required, and not for a day can that inspection be refused. Now then we come to their method of computing the duty on spirits :—

“ The duty upon spirits shall be computed and charged upon the quantity of spirits which passes from the tail of the worm into the spirit receiver, and the quantity which so passes shall be ascertained by gauging and proving the strength thereof in the said Spirit Receiver, or by any such apparatus or meter as the Governor in Council may authorize to be used for that purpose.

“ The capacity of all Spirit Receivers, Fermenting Tuns, Mash Tubs, Coolers and other vessels used in or about Distilleries or Breweries, shall be accu-

"rately ascertained by gauging or by actual measurement by standard measures of capacity, as the officer of Excise may determine or direct; and—

"A correct list thereof shall be made out, by the Distiller or Brewer, in triplicate, setting forth the number, use, dimensions and capacity of every such vessel, and the said list shall be attested by the signature of the Distiller or Brewer, and shall be subject to the verification and approval of the officer of Excise under whose supervision the gauging or measurement was made, and shall be signed by him in testimony of such approval, and every such list shall be received as evidence in all Courts of Law.

"One counterpart of such list shall be kept on record at the Distillery or Brewery, another at the office of the Commissioner of Customs and Excise, and the third shall be retained by the Collector of Inland Revenue within whose district or division the Distillery or Brewery is situated.

"The tail of every worm in every distillery shall be enclosed in a locked or sealed "safe," in which the strength of the spirit flowing from the worm may be approximately ascertained by the inspection of the hydrometer or other suitable apparatus contained therein.

"Every such safe shall be constructed in such manner and secured by such means and by such mechanism as may be approved by the Commissioner of Customs and Excise.

"From the said closed safe all low wines, faints and spirits, from time to time running from the end of the worm, shall be conveyed to the doubler or spirit receiver, as the case may be, through suitable metal pipes visible throughout the whole of their length, with stop cocks and other appliances so arranged that the liquid may be conveyed either to the doubler or to the receiver; but so that no portion of the liquid can be abstracted or diverted from the receiver or doubler without the knowledge and consent of the proper officer.

"The spirit receiver shall be a closed vessel, and all pipes, cocks or valves communicating therewith, as well as all means of access thereto shall be securely locked or sealed, and the key or keys shall remain in the sole possession of the Collector of Inland Revenue, or other Officer of Excise.

"No vessel shall be used as a close receiver for spirits in which there has been bored or made any perforation other than those necessary for its lawful use; and if at any time it shall be discovered that any perforation or hole has been made in such receiver, or that any such exists therein, although it may have been subsequently stopped or plugged, the existence of such perforation or hole plugged or unplugged shall be evidence that it has been unlawfully made, and the distiller in whose distillery such close receiver so perforated shall be found, although the same may have been plugged or stopped, shall be liable to the penalty of five hundred dollars."

Again,—

"In distilleries where a doubler is used, or where a portion of the products of the still, commonly called *Low Wines* or faints, are passed over for redistillation, the vessels and pipes used in that process shall be locked or sealed, and shall receive the *Low Wines* from the safe which encloses the tail of the worm, through pipes, cocks or valves properly secured by locks or seals so as to prevent the running or removal of any liquid therefrom, except with the knowledge and concurrence of the Collector of Inland Revenue."

Thus, again, you will see the great precautions taken against fraud. With regard to the number and capacity of the receivers, it is provided,—

"In distilleries where the weekly production of spirits is not over six thousand gallons and not under two thousand gallons, two spirit receivers shall be

"provided, each of which shall have sufficient capacity to contain at least one week's production of spirit.

"In distilleries where the weekly production of spirits exceeds six thousand gallons there shall also be two spirit receivers, each of which shall have sufficient capacity to contain at least one day's production.

"The quantities of spirits produced shall be gauged and ascertained by the Officer of Excise at such intervals as may be directed by instructions and regulations sanctioned by the Minister of Finance.

"The spirit which passes from the tail of the worm to the receiver shall not in any case or under any pretence whatever be removed from the receiver, until the quantity and strength thereof has been ascertained by the Collector of Inland Revenue or other officer of Excise, and then only with the consent and in the presence of the said collector or other proper officer."

As to the keeping of accounts, it is provided,—

"Every person carrying on any business subject to Excise shall, within five days next after the expiration of the first and second half of each month, render to the Collector of Inland Revenue, or other officer whose duty it is to receive the same, a just and true account in writing extracted from the books kept as herein provided; which account as to Distilleries shall exhibit;—

"1. The quantity of spirits produced on each day during the preceding half month, with the strength thereof, and in a separate column, the equivalent quantity of spirits of the strength of proof;

"2. The quantity of each kind of grain or other commodity or substance used in the distillery, in the manufacturing of spirits during the said preceding half month;

"3. The quantity of grain malted;

"4. The quantity of grain otherwise disposed of."

The returns made are to be attested in this way—

"Every account or return rendered as herein provided shall be made and signed by the person carrying on the business to which it relates or his agent, and shall also be signed by the foreman, clerk, chief workman or other person employed in or about the premises where the business is carried on; And the Collector of Inland Revenue may require any other person employed about such premises, who in his opinion may be best acquainted with the amount of goods produced, subject to Excise, to testify upon oath before him as to the correctness of such account or return.

"Every such account or statement shall be attested by the persons signing the same by the following oath:

"I, _____, do solemnly swear that the account above written, to which I have also subscribed my name, is true according to its purport: So help me God."

Now see what the power of the Collector is,—

"Every such oath shall be made before some Collector of Inland Revenue or other Officer of Excise, and the Collector or Officer, before whom it is made, may put to the person or persons making it such questions as are necessary to the elucidation and full understanding of the account, and for ascertaining whether such person has had the means of knowing the same to be correct; And the Collector or officer aforesaid may also examine under oath any other person or persons employed, or who may at any time have been employed in or about the Distillery, Brewery or Tobacco Manufactory, to which such account relates, or any person doing business therewith or selling material thereto or buying goods therefrom, as to the truth of all such statements and for the purpose of testing the truth thereof, and may reject all such written statements as may be shewn by such evidence to be incorrect or unreliable, and such

"rejection shall render the party making the return liable to the same penalty as he would be liable to if no return whatever had been made."

The duty is thus calculated :—

"The amount of duty shall be calculated on the measurements, weights, accounts and returns, taken, kept or made as herein provided, subject to correction and approval by the Collector of Inland Revenue or other Officer of Excise duly authorized thereto; and when two or more methods for determining quantities are provided for, that method which yields the largest quantity or the greatest amount of duty shall be the standard; But if the Collector or officer has any reason to doubt the correctness of any account or return, he shall compute the weights, measurements or quantities himself, and levy the duty accordingly, and if the result is disputed, the proof of the error or wrong shall rest with the party who is to pay the duty."

Again, we come to the powers of the Officer of Excise :

"1. To administer all oaths and receive all declarations required or authorized by this Act ;

"2. With any assistants acting under him and by his directions at all times, as well by night as by day, to enter into and remain in, as long as he may deem necessary, any building or place belonging to or used by any person or persons for the purpose of carrying on any trade or business, subject to Excise, or in which are any machinery, utensils or apparatus, subject to Excise, and

"3. With any assistants acting under him and by his directions to inspect any such building or place and to take such account as he may deem necessary of every part thereof and of all works, vessels, utensils, goods, and materials, machinery and apparatus, belonging or in any wise appertaining to such business ;

"4. To break up or cause to be broken up or removed any floor, wall, partition, ceiling, roof, door or other part of such building, place or premises, or any ground surrounding them for the purpose of ascertaining whether there is any pipe, worm, still, conduit, tool, vessel, utensil, machinery or apparatus, or any stock, goods, commodity or article subject to Excise concealed or kept out of view ;

"5. To examine the worm of any Still used by any Distiller, by causing the water to be drawn off from the worm tub or refrigerator containing such worm, at any time when in the opinion of such officer the doing so will not be prejudicial to the working of such Still ;

"6. To gauge, measure, weigh, prove, mark, label, stamp, lock, seal or otherwise designate or secure any fermenting tun, mash tub, worm, still, spirit receiver, pipe, cock, vessel or apparatus, machinery or utensil, or any goods, article or commodity subject to Excise, and to close, seal and secure all or any such the said fermenting tuns, mash tubs and utensils, during the period when the said Distillery, Brewery or Tobacco Manufactory may not be at work."

As to the penalty attaching to any breach of these enactments, it is said,—

"Every person carrying on any business subject to Excise who shall fail or neglect—

"2. To keep Stock Books and all such other Books as may be required to be kept by any Regulations approved by the Governor in Council and by this Act ; or

"3. To make true and correct entries therein of all particulars required by this Act or the said regulations to be entered in such Stock Books ; or

"4. Who shall in any way alter, falsify or make or cause or allow to be made any untrue entry or entries in the said Stock Books."

The recovery of duties and penalties is provided for thus :—

"Any duties of excise or license duties payable under this Act shall be recoverable at any time after the same ought to have been accounted for and paid,

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"whether an account of the quantity of spirits, beer or tobacco, has or has not been rendered as herein required, or whether a true return of the utensils, tools and apparatus on which such duty or license fees are payable, has or has not been made as herein required; And all such duties and license fees shall be recoverable with full costs of suit as a debt due to Her Majesty, in any Court of competent civil jurisdiction."

Again, let me quote to you:

"The payment of any penalty or forfeiture incurred under this Act, shall not discharge the party paying the same from the obligation to pay all duties due by such party, and the same shall be paid and may be recovered as if such penalty had not been paid or incurred."

These are the clauses of the Statute, gentlemen, to which I have to call your attention, specially in my remarks on the course of the prosecution. And not only are all these powers deemed necessary in order to secure the Government rights; but in addition, distillers are compelled to give bonds in large amounts. And of the effects of these bonds, and the powers given the Government, you may judge when I tell you that there are nine other suits brought against us in Upper Canada and two in Lower Canada; so that you will observe how completely the Government has the power under the Statute of exacting penalties and duty in these cases. In the present instance they have brought down on us an accumulation of everything the Statute requires, except, perhaps, in one particular; for at the present moment there are twelve different suits pending in connection with this. Now, one cannot help thinking that with all this, and the great efforts made for a long time on behalf of the Government, we have a great deal to contend with. For a long time they have been lying in wait trying to detect something wrong on the part of this Defendant. Every effort was, I say, made to discover that there had been frauds; and really from the rumours outside I was almost led to suppose that evidence would be given to show vast complicity, and that fraud and collusion would be clearly and distinctly established. I was surprised therefore to find that the witness who ought in all fairness to have been called, the Revenue Inspector, was not brought before you by the Government; and that when we called him up he was allowed to pass from the witness box with no further charge, apparently than that on one occasion he telegraphed for keys, which happened to be his own private keys, while he had all the time the excise key shut up in his pocket. That was all the evidence brought forward with regard to him; and surely we have a right now, after the period which has elapsed during which the Government has been carrying on investigations, to complain that they did not bring forward their own officer, who of all others ought to have been best acquainted with the subject. In this case the ground we take is that the Government is compelled to prove everything and we nothing. Government is not now suing us for duties, but for penalties; but there is nothing in the rule of law or the Statute, which in this respect entitles Government to be placed on a different footing from any other party. The Government go on two grounds, both of which, in point of fact, as well as in point of law, are, in my judgment, wrong. I will state to you my impressions of the law, because they must necessarily enter very materially into ingredients with regard to the facts in this case; and I will state to you also the manner in which the

law is to be applied. Government places this prosecution on one of two grounds. They say,—We prove that certain quantities of spirits, amounting to upwards of 3000 puncheons, passed over the Grand Trunk Railway to Montreal and Quebec, and the aggregate of those puncheons is upwards of 500,000 gallons. My learned friend seems to be satisfied to give us that quantity which, he says, went over the Grand Trunk, and that as we returned only 280,000 gallons, there is a difference of 200,000 gallons on which he claims penalties. He says, too, taking the aggregate of the sales, 366,000 gallons, there is here a larger amount than has been returned by about 100,000 gallons; and therefore, whatever you say with regard to what was sent over the railroad, you cannot say a word with regard to your sales. At any rate, they say, 366,000 or 386,000 gallons were absolutely sold by us, which it was our duty to put in the stock-book, and as we returned only 280,000, we were not in a position to defend this. Now, their case depends on one or other of these points. But they rely principally on the first, namely, the quantity that went from the distillery over the Grand Trunk. We say that the Crown is wrong in the assumption. It is the duty of the Crown to show that there should have been returns made which we failed or neglected, and that it was spirit manufactured in the distillery or brought within it. We might have brought into the distillery any number of tons; we had no necessity to make a return of it. All that is required by the form given in the book is in reference to those things placed in one or other of the positions I have stated. It is their duty to prove beyond the possibility of a doubt, either that it was manufactured in the distillery, or brought or bought within its walls. Let us see what is the evidence against their case. We had it stated that 6042 gallons was the capacity of the close receiver; and Arnold, the person managing the distillery, and Wilson himself, who tell us what the distillery is capable of doing, say, on their oaths, that it is incapable of making, during the period of time mentioned, a greater quantity than was returned.

MR. GALT.—My learned friend may recollect that when I wanted to go into the question of measurement of utensils, it was objected to.

HON. MR. CAMERON.—I never objected.

MR. GALT.—I beg your pardon. It was then said there was an information pending with regard to these vessels.

HON. MR. CAMERON.—That was a question of fraud in the measurement; not one as to the actual capacity of the vessels.

MR. GALT.—(To the Judge.)—I submit that my learned friend cannot now be allowed to base any argument on the capacity of the distillery to do business.

HIS LORDSHIP.—With regard to the question of fraud, I prevented Mr. Galt from showing that, as there is a trial with reference to it. But I did not understand that you wished to show the measurement with a view of making evidence that it was capable of doing more.

MR. GALT.—It could have been with no other object.

HON. MR. CAMERON.—Did we object to your showing the measurement of the building?

HIS LORDSHIP.—On both sides you wanted to bring in things collateral to

this issue. As regards the measurement of these receivers, it was irrelevant if it was a question of fraud as between the Crown and them; but it would have been good if brought forward to show that they were capable of doing more. That was never suggested to me; you may have thought of it; and therefore I have presented you with the view I have stated.

Mr. GALT.—That certainly was the intention.

Hon. Mr. CAMERON.—It is clear that it was not on that ground, for one of the questions my learned friend asked was, how much was the receiver capable of holding, and it was said to be 6042 gallons. Therefore there was the measurement; and we showed a difference between galloning and measurement; and there were witnesses to show the differences in measurement, brought by my learned friend. Therefore, he surely had all the measurements, and we never objected to them. But the moment he charged that there was a fraud in the measurement, the effect of which would have been to forfeit the particular article, we said you must not do so, as there is a suit against us, in which this will be a material point. The fact is, however, that they could not prove the capacity to be greater,—and it was not possible that any amount of whiskey beyond the quantity the Distillery was capable of turning out, could have been done. Now, I say my learned friends' case has failed, and failed signally; for they stopped short on the very point they ought to have proved. We establish the fact that the Distillery could not turn out the quantity charged, not only by persons engaged in the Distillery, but by persons employed to go there daily. By these we showed that it could not turn out more than had been returned. We showed that examinations weekly and daily were made, and that only on one occasion of two days, when there was a small breakage in the pipe, and when there was a warping in the man-hole at the top of the receiver, was there anything which demanded the interference of the proper officer. I will show you that it was absolutely impossible that this Distillery could have worked up to the quantity charged. From September to July there were 10 months, of 260 working days. In fact there were only 230 working days altogether, as 30 days must be deducted for breakages. And you will see that unless the capacity of the Distillery was 2,150 gallons per day, it could not have turned out the quantity alleged. Now, the fact is, the Government have never proved the Distillery to have been capable of doing any quantity of work at all, and I say it was clearly their duty to show what it could do. When we showed on the oaths of those people, that it was impossible the Distillery could do more work than was returned, Government should have showed the contrary. And when we find that the Government lays down the capacity of one at 6,000 gallons per week, and these two receivers were about equal to that,—then I say the Government ought to have been prepared to show here that this Distillery was capable of producing a sufficient number of gallons every day, in order to be able to claim that 500,000 gallons went out of it, and was manufactured there in 10 months—a thing which we say was absolutely impossible. And I cannot too strongly impress on you this point, that the very thing which the Government ought to have been prepared to show,—the capacity which the Distillery had worked up to,—that point they failed to show, and went on general evidence to

convict. And, with regard to this general evidence, what is it? If our Distillery could not work up a greater quantity than 1,200 or 1,400 gallons a day, then the rest, which the Distillery is said to have made, must have been either brought into it or taken from thence, in order to bring us within the statute. We were not bound to account, I say distinctly,—distillers though we were—for one single puncheon of whiskey which we did not bring into or manufacture in the Distillery. If 1,000 puncheons were proved to be at Maitland, or anywhere else, we have no right to make returns of them. It must have been returned by other distillers, and we have no right to make returns of it, and unless it came from within the Distillery it is to be presumed it came from them. We were not bound to return it in any form or shape. It was not liable to duty, and we could not be called on to give any account of it. They say,—take your sales, and we will prove the quantity. I say, they do not in the slightest degree render us liable for 6d. The quantities stated over and above consent amounted to 581 puncheons, of which 221 were in the warehouse at Montreal before September 1, and 360 were sold before Sept. 1, and did not require to be returned. These quantities make up more than the difference between the quantity reported to be sold and that contained in our returns, and make, with the quantity on hand in July, an aggregate rather over than under the exact quantity of sales. I can tell you this, because I went over the sales exactly. We know what our statements were, but did not know those of the Government; and you must have noticed that frequently the same quantities were given in more than once,—although I believe my learned friend did all he could to separate the parcels, so that no one should be charged twice. I say we carefully went over the sales, and make them something like 366,000 gallons, which we say was the quantity delivered by us, sold and remaining in store before Sept. 1; and there is a quantity of 20,000 gallons remaining—a quantity sufficient to answer every particle that we should return. Therefore, we say we cannot be charged on that ground. And I say that, when we have before us here an officer of the Revenue, who was specially deputed by Government to make the above examinations—when you are made aware, by the evidence, of the precautions taken to prevent loss by the Government,—precautions which rendered the committal of fraud almost impossible—when you have the testimony of competent witnesses that there could not have been manufactured at that Distillery the quantities charged by my learned friend—you have proof that Government has altogether failed in sustaining the charge preferred. You have had many statements made to you; but where is the proof? How is it, let me ask again, that the Government did not call their own inspecting officer? From not doing so, and because they suspended him, they have made him to be suspected of collusion, and in the information a charge of collusion with Halladay is made, but the person is not named. What evidence have we of it? Not a tittle. The only thing they rely on with respect to that charge is that the station master at Maitland had left the country; and hence they assume there must have been frauds and complicity. Well, all I have to say is, that we have to be tried and convicted on proof, not on suspicion; and in order to obtain that proof they had ransacked every part of the country, and brought people up

here to establish the matter ; and having done this, say they ought not to charge us with mere circumstances of suspicion which they have not found capable of proof ; while they withhold that testimony which, of all others, they ought to have given. I may mention here,—that one of the rules with regard to criminal offences is that the names of witnesses are placed on the back of the indictment, and if the Crown does not call them, the other party can. I contend that if it is necessary in a case of that kind, it is equally so in this ; and we have to suppose, in the absence of clear proof of collusion on the part of the Revenue officer, what the issue would have been had they chosen to put their own officer there unless they were able to offer proof. Have they, let me ask you, offered one particle of proof that from these close receivers anything had been done in the way of fraudulently taking liquor,—or that there had been any destruction or opening of the locks on the vessels,—or that any other form, mode, or process had been adopted by which liquor had been drawn off,—except in the two instances where a little breakage and warping had been spoken off? Had one charge been brought home? On the contrary, had not Government by night and day been on the watch to ascertain these things, and yet could not get their suspicions confirmed? I say that under these circumstances Government have no right to come forward here and ask you on surmises and suspicions to give them a verdict in an information charging us with the sum of \$200,000 ; and this, too, in only one of the series of charges brought against us. The course of Government throughout this whole matter has been most unjust. It has been said that a man ought to be assumed to be innocent until he is found to be guilty ; and we say, that in this case, having offered ample security, Government should have allowed us to go on with our works. But what is our position? From that day to this, our stores of grain have been kept locked up and spoiling—the Distillery is closed—its machinery lies rusting—everything in and about the place is being destroyed or carried away, because the Government have taken the property away from us, and held it from August last to the present time. Every difficulty has been thrown in our way since then, although the people, County Councils, and all the Press in that part of the country, had petitioned the Government that we might be allowed to resume operations. From that hour to this, I say, our works have been closed against us, and Government has not allowed us to do one thing. With all the power in the statute they kept us down. They determined not to assist us in the least in regard to the matter. As my learned friend (Mr. M. C. CAMERON) has said, they have not only done this, but have charged us with every crime in the calendar, with the exception, I believe, of high treason.

Mr. GALT—And rape (laughter).

Hon. Mr. CAMERON—Yes, you did : rape of grain and whiskey (laughter).

Mr. GALT—Rape of the lock (laughter).

Hon. Mr. CAMERON—That there was no tampering with the locks there has been the best of evidence. You have heard of the peculiar make of the locks, and the precautions taken against their being opened by any but the Customs officer ; and, unless in the supposition of collusion, there could not have been any tampering with them. You have had on the contrary the clearest testimony, not only

of the officer of the revenue, but of the person who managed the business, and who handed in sworn returns of the quantity manufactured, that never to his knowledge had there been any tampering with the locks, or spirits drawn from the close receiver except such as were stated in the returns. You have seen that every one of the tubs were locked, that there were full opportunities of examining the strength of the spirits by the hydrometer—and you have heard how the whole of the various vessels and machinery were secured and open to view in such a way as made any tampering with it impossible. No perforation of the vessels or removing of the spirits could take place without the knowledge of those constantly passing up and down; and hence, unless we can suppose the whole of the working men in the establishment to have been in collusion, the thing could not be done. We have had all these facts placed before us; and are we to believe that while all this system of espionage and watchfulness was being carried on, any frauds of so enormous a character could have been perpetrated without discovery? They say we had material to make the spirit, but what sort of proof had been advanced? We have shown a deficiency in one cargo of grain alone of 1500 bushels, and had accounted for the quantity of grain we had received. But all this, the Crown claims, must be thrown out. Everything is to be presumed against us. It must be said on the part of defendant that he did not regularly make returns of the full quantity he had made. I say the law did not require that he should make such returns. No clause in the law, from beginning to end, requires it, unless the articles were brought within the distillery premises. I say that there were no false returns whatever. We may have sent to Montreal two hundred thousand gallons of whiskey more than the distillery produced; but we are not bound to account for where it came from. In conclusion, I would say, that we have been treated most unjustly from beginning to end. Our property has been taken from us, and we have been hunted and hounded through the Province in every way; and we have no right to suppose that there will be the slightest leniency on the part of the Crown, but have every reason to believe that they would come down on us for other penalties to-morrow. They seek to bring us in here for heavy ruinous penalties, but I trust that the want of evidence on their part will prevent any such result. Our position is simply this; that we have shown clearly all the details of our business which the law requires us to show, and that we have ample grounds for claiming an acquittal at your hands, without at all resting in the legal objections, on which however we place great reliance. On the facts of the case themselves, we expect to be cleared from the charge against us by the verdict of the jury. We desire to be enabled to say that it was because we made true returns that we are entitled to be relieved, and that it was on this ground and not because of the legal exceptions that we were discharged from the prosecution which the Government brought against us, a prosecution in which the charge laid has in it the elements of half a dozen different offences, so that in point of fact, while we were apparently tried for not paying duty, we were being tried for assault with intent to commit murder, and I don't know what not. Gentlemen, we have been severely harrassed of late; and if Government has evidence to support their

charge, all we can say is, that they have not brought it forward. We maintain that the Government has failed in a most material point, in not showing the capacity of the Distillery to be equal to making the quantity which they declared had been made. And therefore, I say we ought to be discharged from the information laid against us, because in point of fact, and totally irrespective of points of law, they failed to make out their case. There is yet one point which I must mention before closing, and it is that the Crown has brought this case to be tried at a distance from the place where defendant resided and was well known, and the honest conduct of the affairs of the Distillery had been testified to. On this information the Crown had extraordinary power, and could carry the case where it pleases. Three Assizes have gone by since the information was laid, and though we have been ready, there has been always some pretext for further delay, which of course entailed further and heavier loss on their defendant. This unwarrantable delay will, I hope, prove the last straw to break the camel's back; the last hardship which they will be allowed to inflict on this defendant; and you, gentlemen, will help to bring about this result by giving him a verdict of acquittal.

MR. THOMAS GALT then addressed the jury. He said:—One would imagine, gentlemen, from the observations of my learned friend, that the Government, in instituting this prosecution against Halladay, were actuated by personal and vindictive motives. But, gentlemen, remember who the Government are. They are ourselves. The wants of the country, as you are well aware, require a certain revenue, and to raise this revenue taxes are imposed; and it is a most solemn duty of the Government, as far as in them lies, when frauds are perpetrated, to call the offender to account. What have we to do with Halladay's grievances or those of anybody else. All we have to do is to consider whether Halladay has or has not defrauded the revenue to the extent of \$60,000. And, gentlemen, that is a point on which, I apprehend, you can have very little doubt. Some of you have probably before had the pleasure of hearing my learned friend who has just addressed you; and he certainly made a very able and eloquent speech on this occasion. But what does it all amount to? Has he, during his address, grappled with one single fact? I say, unhesitatingly, he has not. We have had a great deal of invective as to the injustice done to Halladay; and in his closing remarks, my learned friend hinted that the bringing of the trial here before you was a kind of oppression; whereas my learned friend knew perfectly well that these revenue prosecutions are almost invariably treated in this way. But we will put aside all this for the present. What you have to do is simply this. For the purposes of this trial, His Lordship has held that the prosecution has been properly instituted; and you have now to enquire, has the Crown made out such a case as to entitle them to a verdict at your hands, on the evidence? My learned friend says he called persons to show that the Distillery had not the capacity to turn out the work charged. But who were those persons? And what was the value of their testimony? As far as my recollection serves me, not one professional man was called. Mr. Wilson, who was brought before you by them, knows nothing about distilling. O'Donohue, another witness, has told you that he did not know what had been done in spirits at all.

And on that evidence he asks you to say that the frauds could not have been committed. Now, I will submit to you some facts which have been sworn to, and which will show that it is utterly impossible but that Halladay must have committed this offence. You shall judge of the matter on their own statements. Before doing so, I will take this opportunity of making a statement which affords me great pleasure. I have known Mr. Wilson for several years; and it was painful for me to entertain the reflection that he had been culpably negligent in the discharge of his duties. He has sworn before you that he had no knowledge whatever of these transactions, although he was in constant attendance at the mill. You will recollect, too, the manner in which he gave his evidence,—how astonished he looked when I asked him about the great quantities of liquor sent to Montreal—and when I asked him about the 300 or four hundred puncheons stored in the stables at Maitland, he said, you will remember, that though it was Halladay & Co.'s interest then to have shown a large quantity on hand, yet he never heard of their stating that this liquor was there. Halladay, you understand, had been charged with bringing into the Distillery larger quantities of grain than he had accounted for, in consequence of which his property was liable to forfeiture; and he would, hence, have had every motive for showing the whole stock of spirits on hand; but says Mr. Wilson, with astonishment, I never heard of these puncheons in the sheds. I never saw or heard of it. Mr. Brunel also told you that Mr. Borst himself made up the account of spirits sold to September 1; and he (Brunel) said he did not see W. Reid's names in the sales book, nor anything about the great quantities of liquor sold to him. Now, we say, that if that point is in doubt at all, it is owing to the Defendant. He has the sales book—not we. They must have known that it would be their interest to account for all the spirits sent over the Grand Trunk to Reid, if they intended to rely on the statement, as they have done, that they could not be called into account for the quantities sold before September 1, nor what they had on hand on September 1. But what evidence was there to support their position? None. Then, again, there was Chisholm, who was their accountant, book-keeper and agent. All these facts with regard to the spirits must have been within Chisholm's knowledge. Why was he not called here? Why were not their books here to show us if it is true that these 300 or 400 puncheons, which they say were stored in this out-of-the-way stable, were not sold and disposed of after September 1? Gentlemen, there never was one single puncheon of spirits there which was not made and sold within the time covered by this information. These remarks I have made in connection with Mr. Wilson's case, and I have great pleasure in making them, because the frauds were so monstrous that I did not like to call Mr. Wilson before you, when certainly, to say the least of it, it seemed as if there had been gross neglect of duty on his part. From the evidence given yesterday, and especially the closing testimony in regard to the keys, you will see clearly that Mr. Wilson had exonerated himself from a serious criminal responsibility in this matter. To return to my remarks on the case itself, I would say that if you believe the evidence in this case—and it has been contradicted in any particular—you will see that Halladay has, from beginning to

end, been guilty of the most deliberate and deceitful frauds, blinding the eyes of the officer appointed by Government to superintend the works—taking advantage of his confidence to commit the most enormous frauds, and doing that which has, in the end, pressed with great severity on Mr. Wilson. Still I cannot but regret that he should have made use of the remarks uttered by him yesterday with regard to a gentleman (Mr. Brunel) who has done no more than his duty. It is Mr. Brunel's sworn imperative duty to endeavour to protect, as far as possible, your interests and mine, by seeing that such frauds as these are not perpetrated; for remember that the people do not get their spirits one farthing cheaper by reason of these frauds. The case is simply this, that Mr. Halladay, instead of paying the Government about 45 cents per gallon duty, has put it in his own pocket. Now, with regard to the things before you in evidence, you can have no doubt, I think, of those which I am about to submit to you. We have, gentlemen, been talking of figures in this trial to a much larger amount, I fancy, than you have any definite idea of. Millions of pounds of grain have been spoken of; but we do not, I think, realise the magnitude of these quantities. I can give you, perhaps, a clearer idea of the matter by stating that from Halladay's own stock-book I can show you that he has taken into the distillery, and disposed of in some way or other, an amount of grain unaccounted for equal to the yield of 2000 acres of land at 40 bushels to the acre. I desire to show you that Halladay has brought into his distillery this quantity of which he has given no account whatever; and if you are satisfied of this fact you can, I imagine, have no doubt what became of it. There is another point to which I would wish to call your attention. No duty is imposed on corn. Why then should Halladay have any aversion to its being known what quantity of corn came into the distillery? Why find fault with Mr. Jones, the Collector of Customs, because he happened to ask Wilson whether or not he was aware of the large quantities of corn coming to Halladay's distillery? If he was carrying on an honest business, what objection was there to its being known? And why, with regard to the 41 car loads of corn, should Halladay have gone to our officer to make a false entry?—why should he, in addition, tell them what was not true—namely, that there were no manifests? Mr. Halladay knew perfectly well he could not be charged with a single penny on account of the corn, unless it were used in the distillery? Why should he not wish it to be known that a quantity of corn had come to the distillery? Why, when Jones told Halladay that he (Jones) was going to the Grand Trunk station to get an account of the corn brought to the Maitland Distillery,—why should Halladay have thought it necessary to act as he did, and outrage all the principles of religion and decency by his language and conduct? Why this threatening to ruin and smash Jones? Why did not Halladay enter the 10,000 bushels of corn bought at Prescott?

MR. GALT.—Again:—Why should Halladay have at first represented that the eight cars contained but 1,507 bushels of grain, when he afterwards had to admit that they contained 1,404 bushels more? If he were carrying on a fair, legitimate business, why should he deny the receipt of 40,000

bushels of corn in the distillery? Your verdict, gentlemen, will answer. Now I will proceed to prove to you from their own books that Halladay brought into the distillery and consumed there this great quantity of grain that I have stated. They admit having on hand September 1, 644,000 lbs. of corn; and, including this quantity, they admit having brought into the distillery up to the 31st December, 4,685,953 lbs. From this we must of course deduct the quantity they had on hand on September 1, in order to find the real amount that went in during this period, when we get a balance of 4,041,953 lbs. They then state that between January 1 and June 30, they had brought into the distillery, inclusive of that balance, 5,707,533 lbs.; or, in other words from January 1st to July 1st, 1,957,363 lbs. In addition we have proved by Halladay's admission that these 41 car loads had come to the Distillery, making 847,383 lbs. We proved by Whitney that Halladay bought 10,000 bushels of other grain, which would amount to 560,000 lbs. Now, this is not entered in the stock-book. We proved by Milks that there were at any rate 8 cars, which at 22,000 lbs. to the car, would amount to 176,000 lbs. more; and if you are satisfied that these cars came to the Distillery, you will have to add to that amount. Then, in the stock-book for the first half of 1864, they had not, we find, entered the cargo of the *Tecumseh*. Under date Oct. 31, she came in with 13005 bushels of corn consigned to Borst, Halladay & Co., and this, at 56 lbs. to the bushel, would amount to 728,280 lbs. These, together with the other description of grain shown in the Stock Book, would make 8,954,976 lbs. From this we must deduct 174,000 lbs., being what we take to be the true balance on hand at the time the Distillery was seized. I will try and make the calculation clearer to you. I say, taking the stock-book and adding the contents of the 41 cars, the 10,000 bushels bought from Wiser, only assuming the other cars at 8, and adding the cargo of the *Tecumseh*, and there will be a total, including everything brought into the Distillery, of 8,954,976 lbs. To show you, gentlemen, that the Government had no desire to oppress Halladay, I am willing to take the comparatively small amount I have given, as shown by their own statements. We have thus taken 8,780,976 lbs. as the quantity brought into the Distillery and consumed within it, after making allowance for the 174,000 lbs. balance on hand. The real quantity brought into the Distillery and consumed was much more. Now, let us see the amount of the returns of spirits made by Halladay as taken from the close receiver. Between Sept. 1 and Jan. 1, the amount was 67,694 gals., which was, remember, the full quantity they say they distilled within the period. And you must bear in mind that all these returns are verified by sworn statements. Between Jan. 1 and June 30, they distilled and took from the close receiver 173,800 galls., this is the quantity returned to Government as the total amount they manufactured between the 1st Sept., 1864, and the 1st July, 1865. The two quantities made 241,494 gals., and if we multiply this quantity by 17.—for the law now says that every Distillery is bound to account for a gallon of spirits for each 17 lbs. of material brought into and manufactured in a Distillery,—though, in fact, according to the sworn returns, it only took Halladay in his Distillery, some 16½ lbs. of grain to make a gallon of spirits; but, allowing

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him the benefit of the larger quantity, you will find the grain used in the manufacture of that spirit to have been 4,105,398 lbs.; and if this quantity is deducted from the 8,780,976 lbs., it leaves 4,675,578 lbs. This was the amount of corn brought into Halladay's Distillery—proved beyond question—which quantity, we say, was unaccounted for. To find the quantity of bushels, we divide that number of pounds by 56, when 83,492 bushels were obtained. This represents corn alone; and represents in round numbers,—I do not care for coming within 10,000 or 20,000 bushels of the actual amount—a quantity equal to the product of 2,000 acres of land, at 40 bushels to the acre. And all this is totally unaccounted for, unless you accept the statement I give you of the quantity of spirits made. Halladay gives no account, unless such loose statements as that a cargo was lost in the "St. Lawrence," and such like. But do you think for a moment that any business man would lose 15,000 or 18,000 bushels of grain, and that nothing would be said about it? If that corn had not been used, would he not have given evidence of it? Arnold was produced to say that he believed a cargo had been damaged. And, again, I would say, gentlemen, that we are not in this enquiry taking every pound of corn into account; we are not even requiring them to account for 1,000 lbs, but when 16,000 or 18,000 bushels of a cargo come into their distillery, they must be made to account for it in some more satisfactory way than this. You also had, it is true, some vague assertions about feeding cattle, and one witness was called as to that point. But surely no one in their senses will credit it that 80,000 bushels could have been disposed of in that way. Why, gentlemen, the witness called here, would not turn that quantity over in the time mentioned. I will now proceed to give you an account of the spirits, carefully guarding against counting the same quantity twice. To prevent trouble about whether the spirits changed hands once or twice, I will prove the quantity sent from Maitland. We had in Court no account of spirits sent by railway to Maitland. It was insinuated, indeed that some quantity has been brought from Toronto; but of that we had no evidence. Now here are the returns of the quantity sent from Maitland to Montreal. The return contains the number of the car, the date of forwarding from Maitland, number of way-bill, person to whom consigned, description of goods, date received, by whom checked, date of delivery and to whom delivered and the conductor who brought it there. These, I may say, are verified by every conductor. Every car has been traced from the time it left Maitland, till it was delivered in Montreal; and you will remember that Mr. Doutre, in answer to the last question put to him by my learned friend, said that they never heard of one of these puncheons of spirits going astray. It was shown in this way, that the quantity sent from Maitland to Montreal was 2726 puncheons of spirit and 833 barrels. It was proved to you by Arnold and all the gentlemen brought up, that these puncheons of spirits were almost invariably represented as 50 o. p. If we take what Arnold himself calculated, 30 gallons to the barrel, a low estimate, only about two-thirds of the contents, but, anything you please, gentlemen, taking this, we find that in the 843 barrels there were 24,990 gallons. In each puncheon there were estimated to be 174 gallons, so that the quantity sent

over the road in puncheons reached 474,324 gallons; making a grand total sent to Montreal of 499,314 gallons of spirits.

HIS LORDSHIP—Does that include Quebec?

MR. GALT—No; in addition there were sent to Quebec 409 puncheons and 110 barrels. Multiplied by 174 we find this gives 71,166 gals. to the 409 puncheons, while there were in the 110 barrels 3,300 gals., making a total of 74,466 gals. Now abstracting the amounts from his lordship's notes as the amount of sales actually proven,—I did not undertake, you will recollect, to prove the disposition of every gallon,—we find the amount reached 349,027 gallons. In addition to this, Middleton proved 56,062 gallons. It was also proved that the sales at Quebec reached 64,173 gallons. But it is matter of perfect indifference to go into all the details, for I have taken care in framing the information to put the amount on which we seek to recover so far below the true amount, that you will have no difficulty in satisfying yourselves of the fraud. Now, I will state to you the whole quantity which he made, and of which he had the disposal, according to his own stock-book. He had on hand 83,080 gallons on September 1. Between that date and December 31, as I said before, he manufactured 67,694 gals.; and between January 1 and July 1, he manufactured 173,800 gallons. This makes the total he had to dispose of in any way or under any circumstances, 324,574 gallons. On July 1, 1865, he admits having on hand a balance of 30,592 gallons. Consequently, the total amount he had to dispose of was 293,982 gallons. That was every gallon which, according to their stock-books, they had on hand or could dispose of. You will recollect, that according to their stock-book, when Arnold was checking one item by item, I showed that there was disposed of by other means than the Grand Trunk, between Sept. 1st. and Jan. 1st., 16,988 gallons. These were sent either to Wiser or others. They also say in the stock-book that between Jan. 1st. 1865 and July 1st., 1865, they disposed of by conveyance other than the Grand Trunk 28,291 gallons, making a total of 45,279 gallons. This would leave the whole amount they had to dispose of over the Grand Trunk—according to their own statement—248,703 gallons. Now, you have evidence of what they did send.

MR. RICHARDS.—According to your statement, how much is sold?

MR. GALT.—There were sold in Montreal 349,027 gallons. In addition to which Middleton proved 56,062 gallons, and the sales at Quebec were 64,173. In addition to which must be added the following sales, which appear on the stock-book, but have not been before included.—E. Hudon, 14,785 gallons; W. McDonald, 5,676 gallons; Lyman, Clare & Co., 2,008 gallons; S. Birm, 907 gallons; Cuvillier & Co., 27,920; J. W. Reid, 4,972. In all 56,268 gallons. The sales not by the Grand Trunk were 45,279 gals. Having all these things before you, gentlemen of the jury,—having proved that this spirit came from Maitland, and that the material for making it was taken to the Distillery—having proved the sales in Montreal and Quebec—can you doubt that Halladay has defrauded the Government to the extent of 200,000 gallons of spirits? No case whatever has been made for the defence, except the calling of Wilson, who says that if Halladay & Co. did this

he was not aware of it. That is really the whole defence. Arnold himself admitted selling between 300,000 and 400,000 gallons in Montreal. We show in addition, 56,268 gals. entered in the stock book, as sold in Montreal. The actual quantity sold in Quebec was 64,173 gallons. Now do you believe that quantity of spirits came from Maitland, or was it water? It was spirits, beyond doubt. Where then did it come from? There was no other Distillery within 10 miles of them. Is there not sufficient evidence before you to lead you to believe it came from this Distillery, and that Halladay—by some means which we are unable to trace, but which are perfectly manifest,—had the locks opened and the spirits pumped out. We did not undertake to prove the way this was accomplished, but we did undertake to prove, and have fulfilled our undertaking, that he made upwards of 200,000 gals., over and above his returns; and this I think you will have no trouble to find, under his Lordship's directions. Indeed I have no question you will be satisfied that not only has he taken that quantity, but far more,—that 300,000 gallons were fraudulently disposed of. The manner in which this has been done, I cannot explain to you, but that it has been done is undeniable, unless you can believe that some one made him a present of that quantity. It was stated that he might have bought this spirit. But if that were really the case, do you think they would offer no evidence of such a vital point? Nothing of the kind was given, as you know. And I say now, that having shown you that the material sufficient to make the quantity charged was in the distillery, and having given you evidence of the shipment from Maitland, and sale of spirits to that extent,—under these circumstances, I say, can you doubt that by some means or other Halladay has defrauded the Government to the amount stated. If, as I think, you cannot doubt it, then, feeling that the Government is only doing its duty to the public in seeking to put a stop to such frauds, it will be your duty to strengthen the hands of the Government by giving them a verdict in this case.

His Lordship then charged the jury. The case, he said, has been tedious; but, gentlemen, all the papers are before you, and you will be supplied with every information which it is in the power of the Court to give, in order to enable you to arrive at your verdict. According to the principles of law, every one is presumed to carry on business honestly, until the contrary is proven. The Crown has here no advantage over the subject; and you may, gentlemen, look on this case as you would on one between two private persons in partnership, who sought to ascertain honestly their rights. The Crown, you are aware, gives certain rights of trade to the subject, for a certain percentage, which varies in different cases. This is honestly the right of the Crown. In the case of distillers, the Crown gave them leave to carry on their works; but the moment they made a gallon of proof spirits they were indebted to the Crown 30 cents; and, acting as they did, under license from the Government, they had no right to defraud the Crown of that amount. That was the undoubted right of the Crown—their property—which the other party to the agreement, the distiller, could not appropriate. The case is as if a farm were rented in shares. Each was fully entitled to his share, whatever it was, and ought not

to be cheated out of it. In a similar way you must look upon this case. The Crown, in opening the case, says,—We gave this defendant leave to distill at Maitland on the conditions stated in the statute. To protect our revenue in this as in other similar cases, we took the most ample precautions in looking after the works, watching them, and in fact using every safeguard. The Crown had an interest in every gallon of liquor manufactured there, and they say we have ascertained that there was at that Distillery sufficient grain to have made the whiskey which we charge was made and sold in different places. That is the first point. Then they say,—All the precautions we took did not prevent you from making and taking away a certain quantity of that liquor without paying duty. Defendant hearing this charge, stands on his dignity and says,—I won't show you my books, nor give you any satisfaction. I will stand on my rights and put you to the proof. That is the proof, gentlemen, on which you are to determine the case. If the proof does not establish the charge, then it will be your duty to find against the Crown. If, as in any ordinary transaction between man and man, you are satisfied that the charge has been sustained, then your verdict will be in favour of the Crown. The charge is sought to be established in this way:—They say—We show a certain quantity of grain coming into your Distillery,—which came under your control—and allowing the full amount of 17 lbs. to the bushel, that quantity of grain would have made so much whiskey. Then they proceed to show that a certain quantity of this whiskey was carried over the Grand Trunk; and by the Grand Trunk officers they try to prove that so much spirits was carried over that road from Maitland to Quebec and Montreal, in a given time; and they say, besides that, we show that in Montreal and other places you sold so much; and, comparing all these circumstances, we have given satisfactory proof of our charges. Another ingredient which entered into this discussion was, the opportunity of taking the spirit. I have prepared for you, gentlemen—very much the same as Mr. Galt has done—statements showing the quantity of grain coming to the distillery, and also the quantity of spirits made there. From this, you will see that the quantity of corn on hand on September 1, 1864, was 644,000 lbs.; rye, 112,000 lbs.; malt, 110,000 lbs.; oats, 75,000 lbs.; besides which there were the 41 car loads of grain; the quantities coming by vessels, by the Grand Trunk, from Wiser & Co., the cars signed for by Wilkes, which, including the quantity on hand, made a total of 9,648,761 lbs. corn. From this we must deduct the quantity on hand when the Distillery stopped, which would leave 9,474,671 lbs. and if to this you add the rye, malt and oats, it would make 9,704,171 lbs. of grain. That would distill 552,246 gallons, by their own books. And, not taking into account the evidence of Jones and the other witnesses, they had on hand 8,780,976 lbs. which would give a total of 516,528 gallons. Now, you are to ask, do these statements satisfy you that they had grain to manufacture this number of gallons. That is the first step. Now here is their spirit account. They had on hand in the Distillery September 1st, 1864—duty paid—40,728 gallons; in bond, 42,352 gallons; making in all, 83,080 gallons. There is no dispute about this. Then, according to their book they took from the close receiver, 241,494 gallons. They had there-

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fore, to dispose of honestly, 324,574 gallons. This is not disputed. They sold to Wisser & Co. 19,389 gallons. They sent by the Grand Trunk 2,726 puncheons, containing 474,224 gallons. I express no opinion in the matter. I have no right to do it. I only arrange the facts for you. Then there were 833 barrels, which at the low estimate of 30 gallons to the barrel, made 24,990 gallons which went to Montreal. This gives a total of spirits sent to Montreal of 499,314 gallons. Then there were sent to Quebec 74,466 gallons. Altogether they make out that 619,059 gallons went over the Grand Trunk from Maitland. But there is another way by which they make the quantity 570,810 gallons, making a difference in the result of the two modes of calculation. These are the quantities of grain and spirit which have been mentioned. The Crown says, further, we do not undertake to show how it was possible to get out this spirits from the Distillery, so that the officer did not know it. But you must deduce from these circumstances—from the proof we have given—that the liquor we charge was made at Maitland, and taken from that place; and in consequence of this, we ask for a penalty under the statute, were not made, and also ask to recover 90 cents on each gallon not returned. That is the evidence and the way the Crown puts it. There is one circumstance which I must remind you of, and which you must consider, respecting the whiskey, called Reid's; for that, no doubt, formed part of what was carried by the Grand Trunk. Mr. Arnold gave an account of a quantity of liquor which came consigned to Reid. He had, he said, an order to get that spirit whenever it came, but did not know whether the order produced was it or not. He said that all that was consigned to Reid came into his (Arnold's) possession, and that he sold it, and had instructions from Borst, Halladay & Co. to keep the proceeds separate from his other sales, and that he did so sell and account for the proceeds of it. That would clearly show that it was theirs all the while. When he was recalled again, and it was discovered that from 300 to 400 puncheons were in the cow-stables about the time the settlement took place, he says that was not taken into account then, and was never entered in the book—that it belonged to a former year—that it was sold. If it had been so sold, and the duty paid, the transaction would be right enough. He says it never was entered in the stock-book. But, you will ask, was it so sold? Was it not belonging to Borst, Halladay & Co. all the while. Did it not go to Arnold as their agent? and did he not sell for them. Put what construction you please on it, gentlemen. If they were carrying on an honest, legitimate business, what need was there for pretending that it belonged to Reid—whom nobody knew—whom nobody can produce—and who was, in fact, nobody? For what purpose, you may consider, was this name used? You may carry on business under what name you like; providing it is done honestly, there is no harm. From the account, given in this case, what idea do you form? You have had it in evidence that liquor in large quantities was put away, where the Inspector never heard of it. According to the evidence, each of these casks of liquor were worth about \$100. There were some 350 so put away, and these would represent a value of \$35,000. If there were

400 put away, it would make \$40,000, which quantity of liquor was at Maitland at that time, but which the Inspector never heard of. It was there, consigned to Reid, and was subsequently received in Montreal by Arnold, who sells it, keeps the proceeds apart from the rest in his possession, and accounts for it to Borst, Halladay & Co. A good deal had been said in reference to the grain arrival,—the books now here were not, it is said, the books first shown to Mr. Brunel at the railway station. And I did not allow them to speak anything about the railway station matter until it had been brought home to Halladay by Milkes. You will remember he spoke of being generally employed about the distillery. He was there at the distillery, but what he was doing he does not say definitely. While he was there he got 15 cars of grain. The station master, he says, asked him to sign the receipt, and he did so, but left them there, and was not aware Halladay had anything to do with them. But at last the fact came out that Halladay's teams went there, and did take away the corn. No duty, you will remember, had to be paid on corn, and the use that had been made of the fact thus brought out for the Crown had been to show the quantity used in the distillery. Every cargo that came in, dutiable or not, they were bound to report what it contained, so that the Government might know the quantity of grain coming into the distillery. On pain of seizure, the captain of every vessel is obliged to show the Custom House officer the manifest of his cargo. The officer consults these manifests—they are generally sworn to—and he has also the Captain's memorandum. Now here was another fact. In some way or other, the Custom House officer happened to say to Wilson,—Do you know how much corn is coming in for Halladay,—and the amount was mentioned. Wilson says he mentioned this to Halladay, and next Halladay comes to Jones, and you have heard of the way he conducted himself when he came to that officer's place. Taking these circumstances into account, what opinion do you form of this conduct. That is all I think it necessary to call your attention to with reference to the case for the Crown. On the part of the defence, it is said that the Crown must prove everything. That is quite so. It is quite right for them to say we are innocent in point of law, and if we are not proved guilty we ought to be acquitted. The answer to all this is really in their own power. For if they had produced their sales book, when called on to do so, that would be evidence in the matter at once. They might have produced their sales book, or clerk, to show all the liquor ever sold. That would have been an answer in a moment. But they did not do that, and are not bound to do it. They adopt the course of saying to the Crown, you are bound to prove that we made at Maitland more than we returned. They say we might have had as much liquor as we liked to bring from anywhere else, and you have no right to count that, though it was carried from Maitland. Now, are there any circumstances shown to satisfy you that the whiskey charged was made anywhere else than at Maitland? Do the circumstances detailed by the Crown satisfy you that it was made at Maitland? As to the

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liquor consigned to Reid, Arnold, you will remember, said it had been made there. Where, you will ask, did all these great quantities of liquor come from? Were they made at Maitland?—for unless you infer that it was made there and taken from thence, the proof of the carriage over the Grand Trunk amounts to nothing. That will be a point for your consideration. Then it is alleged for the defence that the distillery is not capable of producing the quantity charged. And who was called to prove the capacity? We have had the rectifier and the general evidence of Wilson, who says he had no experience. The rectifier is the man who makes the liquor fit for sale. Now, is this the person whose evidence ought to satisfy you as to the capacity of the distillery to produce only the quantity returned? Or would not the distiller himself, who knew its powers, have been the proper person? He is not called.

Hon. Mr. CAMERON.—He is the defendant.

HIS LORDSHIP.—Counsel knows quite well that when I speak of the distiller, I mean the man superintending the distillation, and a man of very considerable skill he must have been.

Hon. Mr. CAMERON.—The man your lordship speaks of was the man.

HIS LORDSHIP.—Not at all.

Hon. Mr. CAMERON.—Your lordship cannot assume that as a matter of fact of which there is no evidence.

HIS LORDSHIP.—(to the jury).—Then let it be assumed that there was no person there to manage the distillery and distil the liquor. Are you satisfied that the still had not the capacity to do the work charged? If it had not, what became of the grain? That is the first difficulty. Lastly, they say, all the machinery was as perfect as it could be. Everything was right, according to the requirements of the law and the Inspector. That officer was invested with great powers to enable him to watch the working of the distillery closely. He found nothing wrong about the premises; and the inference which the defence wishes you to draw is, that if he could see nothing wrong—if the man specially appointed for the service saw or knew of no frauds connected with the distilling—that you should find there was nothing wrong. The Crown is bound to prove its case, they say. Has the Crown proved it to your satisfaction? If so, they are entitled to your verdict. If they have not made out a case, it is for you to say so. It is not a legitimate argument to say that because everything was right, so far as the Inspector knew, that that should satisfy the jury. Very likely he believed everything was right so far as the distillery and the manufacture was concerned. A man meaning to be honest—thinking every one else honest—not suspecting and unwilling to suspect that anything was wrong, does not believe that anything was wrong. As to the circumstance of the Inspector's keys, you had Wilson saying that he generally carried the keys of the distillery about his person, or left them in his desk at Maitland, locked up. He occupied the same office with Jones; and the evidence is that on one occasion, which he had

forgotten, in the first instance, when he denied having ever telegraphed for his keys to Chisholm—he did telegraph for his keys. And on Mr. Jones mentioning the circumstance, Mr. Wilson said that on that occasion he did leave the keys, when he went away, hanging in his desk; but that at that time, when he telegraphed, he had the distillery keys in his pocket. He says that sometimes the keys were locked up in the desk. Chisholm says he was directed by Wilson to get the keys; and Jones says take them, and he thinks Chisholm got them and did not return them the next day. It is further said that Wilson told Jones that if at any time he left the keys he would be obliged to Jones to take care of them. What do you deduce from these facts? Chisholm was the book-keeper and paymaster, and this man had the keys of Mr. Wilson's desk, and if the other (the distillery) key were there, could, of course take it. The Crown shows this opportunity had of opening the locks, and says they had evidently no difficulty in getting what they wanted out of the receivers, for Wilson was there sometimes only half an hour, sometimes part of a day. These, gentlemen, are the leading facts, so far as they are material, on both sides. The Crown must satisfy you, beyond any reasonable doubt, that it was defrauded—that the liquor was taken out without paying duty; for the defendant has a strict right to say—we will give you no information—we will not open our books in any way—we will stand with folded hands, and put the Crown to the proof. Does, then, the proof satisfy you that any quantity and what quantity was taken away from Maitland without payment of duty?

Hon. Mr. CAMERON—I would wish to call your Lordship's attention to one or two points on which you have not made any observations to the jury. First, that a large number of cattle, called 1,000 head, was fed at Maitland. Then, that there was a loss on one cargo of 1,500 bushels.

HIS LORDSHIP—That cargo was never distilled.

Hon. Mr. CAMERON—Yes; it is all put in.

HIS LORDSHIP—I think not.

Hon. Mr. CAMERON—Then there is the point as to the vessels in the distillery being secured with locks; and as to the breakages.

HIS LORDSHIP—The defendant calls attention to these points, and of course they are all for your consideration. It is said there were about 1,000 head of cattle fed at the distillery; and that—especially in the first year, concerning which we have nothing to do—there were stoppages in the distillery frequently, in consequence of breaking down; and then it is represented that, on such occasions, meal had to be given to the cattle. Of course, when the distillery broke down, and the stock of slops was exhausted, the cattle had to be fed on something else. But, according to the statement in the books, as I understand it, they were allowed to take credit for all they claimed as fed to horses and cattle; and the quantity so claimed was excluded from what was made out against them. However, you are to consider that. You see, too, that there are not so many gallons charged against them as their grain would have made—there is a very con-

siderable difference in this way. Allowance has, of course, to be made for deterioration in the grain; for if it were heated, it lost so much of its spirit-making power. With reference to the locks and keys, I must tell you that from the time they got locks, in which the pieces of paper were put, it does not seem possible that they could have opened them without Wilson's knowledge, for he could have at once discovered any tampering with them by the perforation in the paper. The keys, I understand, were changed once; and paper put in some, if not all the locks. No doubt Mr. Wilson took every precaution, though he never suspected that anything was wrong; and we find, accordingly, that he was very much surprised at what Arnold said about those 300 or 400 puncheons which were in the cattle-sheds. You will see from this that he could not have looked very closely—I mean suspiciously—about. As to the points of law, they have not to be submitted to you, gentlemen. The questions of law will be disposed of in the courts above. You have, as I already remarked, to dispose of the case as you would of one of a partnership transaction. Here is the article made, and the amount. In that quantity the Crown becomes a sharer; and the consumer has to pay it all—he has to pay both the parties to the agreement. If, as is charged in their cases, the distiller does not pay the Crown its dues, he alone benefits. The people share nothing of the profits. But he is the gainer of what has been held back, and is being enabled to undersell the legitimate maker by a small per centage; and, for that reason, you will see that it is quite likely that the suspicions as to this case arose from some person in the same trade. That trade was now in the hands, was said to be very profitable, and they were as jealous as possible of each other. It is quite natural some such person should have said: these people are selling their commodities lower than they can do honestly; and no matter how sharply the officers are looking after the distillery, there must be something wrong. Then, I may remark, that Mr. Brunel's conduct in the matter has subjected him to a good deal of odium. He is General Superintendent of Excise. He became suspicious that all was not right in the distillery; and he was determined to find it out if possible. Then Mr. Wilson is suspended—not being fit for the office—not being guarded enough, or wanting experience. Very likely this training would make him twice as efficient an officer as before; and under the circumstance it was not unnatural that he should feel as he did, though it was improper to express it. As regards Brunel's evidence, this much must be said. He has not sued for penalties, or else, I suppose, he would be entitled to half the amount. He does not sue for penalties, and there is a clause in the statute which says that a man may be competent as a witness, although expecting to get something from Government for being evidence in a case of this kind. Without this kind of protection, it would be almost impossible to get on. Mr. Brunel was in this instance merely doing his duty to the Government; and he would be failing in that duty if he did not take every possible means to protect the revenue. The case just amounts to this: the duty on this whiskey is just

about half its value. They sell proof at about 82 cents to 85 cents per gallon. The Crown's share was nearly half of this sum. Did the other party, this defendant, honestly give the Crown the share he ought to have given. Has the Crown satisfied you they were deprived of their right share in the spirits? If so, you must find for the Crown, and if not, your verdict will be for the defendant.

The jury then retired to consider their verdict, at half-past two o'clock, p.m. At 4.45 they returned, stating that they could not agree, but were sent back. At half-past six o'clock they again came into Court, one juror being desirous to ask information. Having received the information they retired, but again returned, stating that they could not agree. At this hour, about 7 o'clock, p.m., his lordship directed them to be locked up for the night.

The following morning the jury stated they were still unable to agree, and were discharged.